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Supreme Court of the United States

OCTOBER TERM, 1949

No. 83

REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA, PETITIONER,

vs.

W. E. CARROLL, CLARENCE H. CALHOUN, MRS. HATTIE J. PICKARD, ET AL., ETC.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF GEORGIA

PETITION FOR CERTIORARI FILED MAY 27, 1949.

CERTIORARI GRANTED OCTOBER 17, 1949.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

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ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF GEORGIA

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[fol. 1]

IN SUPERIOR COURT OF FULTON COUNTY, STATE OF GEORGIA

Bill of Exceptions

Georgia, Fulton County.

Be it remembered: That on the 25th day of September, 1947, and during the September Term, 1947, of the Fulton Superior Court, there came on to be heard before the Honorable Bond Almand, one of the judges of the Superior Court of Fulton County (Atlanta Circuit), then and there presiding, the case of W. E. Carroll, Clarence H. Calhoun, Mrs. Hattie J. Pickard, Mrs. Emma B. Moore, and Sam Pickard, Trustee for Sam Pickard, Jr., as plaintiffs, versus Regents of the University System of Georiga, a corporation under the laws of Georgia, and Fulton National Bank, a corporation, as defendants, the same being case Number A-937 in said Court, said case coming on to be heard on all issues of law and fact before the Court without the intervention of a jury, by agreement of the parties.

Be it further remembered: That said case was an action for an equitable accounting between the parties based upon a contract between the parties executed in April, 1943, and for other equitable relief.

Be it further remembered: That at said time and place said case came on for trial upon an agreed statement of facts, stipulations of the parties, and certain documentary evidence introduced without objection, and after presentation of testimony and oral argument of counsel, the matter was submitted to the Court on all issues of law and fact, without the intervention of a jury, by agreement of all parties.

Be it further remembered: That after hearing all of the evidence and argument of counsel, the said Court took the case under advisement and on the sixth day of October, [fol. 2] 1947, rendered and entered a preliminary order, judgment or decree therein.

To those parts of said order, judgment or decree, to wit:

(1) Ruling that the Federal Communications Commission was without jurisdiction to nullify, change or anywise modify the duties and obligations of the parties to the contract of April 15, 1943; and

(2) Ruling that the order of the Federal Communications Commission of November 9, 1945 denying a license renewal to Regents of the University System of Georgia and its radio station WGST, because of the existence of the contract of April 15, 1943, and authorizing the filing of a further application for license renewal based on a disaffirmance of the contract, did not excuse defendant from further performance of the contract due to impossibility of performance by reason of an act of law; and

(3) Ruling that the Regents of the University System of Georgia could not now assert that the value of the properties received from the plaintiffs was less than the amount paid under the contract of April 15, 1943, prior to its disaffirmance; and

(4) Ruling that the plaintiffs are entitled to recover from Regents of the University System of Georgia a sum equivalent to 15% of the net billings received from the operation of the radio station for the period in question, and to said order, judgment or decree as a whole, defendant, Regents of the University System of Georgia, then and there excepted as being contrary to law, and within the time provided by law, tendered a bill of exceptions pendente [fol. 3] lite thereto which was certified by the Court on October 24, 1947 and filed as a part of the record in said case.

Defendant Regents of the University System of Georgia now excepts to the above specified parts of said order, judgment or decree, and to said order, judgment or decree as a whole, as being contrary to law, and assigns each of said judgments or rulings as error as being contrary to law, and assigns error on said bill of exceptions pendente lite and to each and all of the judgments and rulings therein excepted to, as being contrary to law.

Be it further remembered: That thereafter, on the 10th day of October 1947, the court rendered and entered a final order, judgment or decree in said case in accordance with its preliminary order, judgment or decree of October 6, 1947, that the plaintiffs, W. E. Carroll, Clarence H. Calhoun, Mrs. Hattie J. Pickard, Mrs. Emma B. Moore and Sam Pickard, Trustee for Sam Pickard, Jr., do recover of the defendant, Regents of the University System of Georgia, the sum of $144,968.63 principal, the same being the amount

determined to be due, under the findings of the court, as principal up to and including the month of August 1947; that the said plaintiffs do recover of said defendant the further sum of $10,991.31 as interest on said principal sum to the date of said judgment; that the said plaintiffs do recover of the said defendant future interest on the principal sum of $144,968.63 at the rate of 7 per cent per annum to the time of payment and satisfaction of said judgment, which judgment or decree is hereinafter specified as a part of the record in said case.

[fol. 4] To the said final order, judgment or decree of October 10, 1947 defendant, Regents of the University System of Georgia, then and there excepted as being contrary to law, and now excepts thereto and assigns the same, and each and all of said judgments and rulings, as error as being contrary to law, contrary to the evidence, and against the principles of justice and equity, and says:

(1) That the Court erred in ruling that the Federal Communications Commission was without jurisdiction to nullify, change or in any way modify the duties and obligations of the parties to the contract in question, because:

(a) Under the law, and under the uncontroverted evidence in this case, the parties to said contract knew that the operation of Radio Station WGST depended upon the grant of a license to so operate from the said Federal Communications Commission, and said operation was subject to federal regulation and control under the Communications Act of 1934, as administered by the Federal Communications Commission, and the contract of April 15, 1943, was made with reference to that law.

(b) The parties also knew that under said Communications Act of 1934, the Federal Communications Commission had jurisdiction over any contract or agreement affecting the operation of a radio station in the public interest, or affecting the present or future financial ability of a radio station to operate in the public interest, and the contract of April 15, 1943, was made with reference to that law.

(c) The Federal Communications Commission found the contract of April 15, 1943, to be such a contract over which [fol. 5] it had jurisdiction, and the Federal Communications Commission did have jurisdiction over the subject matter and over said contract.

(d) The decision of the Federal Communications Commission that the contract was one over which it had jurisdiction because it affected the ability of the radio station to function in the public interest, cannot be collaterally attacked in the Fulton Superior Court, and the Fulton Superior Court cannot substitute its judgment as to the effect of the contract upon the ability of the station to function in the public interest for the judgment of the Federal Communications Commission on that subject, and to so hold is to substitute the Fulton Superior Court for the agency designated by Congress as the forum for such matters in a field in which federal power is exclusive.

(2) That the Court erred in ruling that the action of the Federal Communications Commission, in denying a license renewal to Regents of the University System of Georgia so long as the contract of April 1943 remained in effect, did not excuse defendant from further performance of the contract due to impossibility of performance by reason of an act of law, because under the law and the uncontroverted evidence in said case, further performance of the contract of April 15, 1943, was rendered impossible by the action of the Federal Communications Commission, which action is equivalent to an act of law, and under the ruling of the Federal Communications Commission a license to operate the radio station would not be granted so long as any force and effect were given to said contract by Regents of the University System of Georgia.

[fol. 6] (3) That the Court erred in ruling that the Regents of the University System of Georgia could not now assert that the value of the properties received from the plaintiffs was less than the amount actually paid under the contract prior to it disaffirmance, because, under the law, specific performance of the contract of April 15, 1943, cannot be had, and no action lies as for breach of contract, but in equity the parties are not without a remedy, they having the right to an adjustment of equities under the doctrine of equitable rescission, and it was proper to assert and prove by uncontradicted evidence that the physical properties, equipment, and other assets received by the defendant, Regents of the University System of Georgia, from the plaintiffs, was less in value than the amount of money already paid to the plaintiffs under the contract.

(4) That the court erred in ruling that the plaintiffs are entitled to recover from Regents of the University System of Georgia a sum equivalent to 15% of the net billings received from the operation of Radio Station WGST for the period in question, because:

(a) Under the law and the uncontroverted evidence in said case, said ruling amounts to an order for specific performance of a contract for the payment of money.

(b) Under the law and the uncontroverted evidence in said case, said order and ruling amounts to an order for specific performance of a contract, the performance of which will result in a violation of law, and a violation of a valid order and ruling of the Federal Communications Commission, the agency designated by the Congress of the United States to administer and carry out the provisions of the [fol. 7] Communications Act of 1934, the operation of said radio station being subject to said law and subject to the exclusive jurisdiction of said federal agency.

(c) Under the law and under the undisputed evidence, said ruling and said judgment is based upon an erroneous measure of damages for the reason that Radio Station WGST could not legally function without a license from the Federal Communications Commission, and the Federal Communications Commission by its order of November 9, 1945 denied the application of the defendant for a renewal of the license because of the existence of the contract of April 15, 1943. Operation of the Station thereafter, with the contract in force, would have been illegal. Without the operation of the station, the contract had no monetary value, being predicated solely upon 15% of net billings from the operation of the station. Under the law there can be no greater recovery for a breach of contract than there would have been had there been no breach. Had there been no breach of contract, the radio station could not legally have operated from November 9, 1945, to the date of said trial.

Regents of the University System of Georgia names itself as plaintiff in error herein.

It also names as plaintiff in error herein its co-defendant in said case, to wit: The Fulton National Bank of Atlanta (Fulton National Bank, a corporation).

It names as defendants in error herein W. E. Carroll, Clarence H. Calhoun, Mrs. Hattie J. Pickard, Mrs. Emma B. Moore, and Sam Pickard, Trustee for Sam Pickard, Jr., the plaintiffs in said case.

[fol. 8] Plaintiff in error, Regents of the University System of Georgia, specifies as material to a clear understanding of the errors complained of in this Bill of Exceptions, the following portions of the record in said case:

1. The petition filed by W. E. Carroll, Clarence H. Calhoun, Mrs. Hattie J. Pickard, Mrs Emma B. Moore and Sam Pickard, Trustee for Sam Pickard, Jr. (omitting process and service).

2. The answer filed by defendant, The Fulton National Bank of Atlanta.

3. The answer filed by defendant, Regents of the University System of Georgia;

4. The amendment to the answer filed by Regents of the University System of Georgia, together with the order allowing same.

5. The motion of plaintiffs to strike the answer of defendant Regents of the University System of Georgia.

6. The brief of evidence in said case heretofore approved by the Court and filed as a part of the record in said case.

7. The preliminary order, judgment or decree entered by the Court under date of October 6, 1947.

8. The Bill of Exceptions Pendente Lite filed by the Regents of the University System of Georgia and allowed by the Court on October 24, 1947, and filed as a part of the record in said case.

9. The order, judgment or decree of the Court entered under date of October 10, 1947.

[fol. 9] 10. The entries of filing of each and all of the parts of the record above specified to be entered and transmitted in the proper order.

Plaintiff in error shows that the Supreme Court of Georgia, and not the Court of Appeals, has jurisdiction of this Bill of Exceptions under Article VI, Section II, Para-

graph IV of the Constitution of the State of Georgia of 1945 for the reason that the proceeding in which the judgment or decree excepted to was rendered was one in equity involving an equitable accounting, and the granting of other equitable relief.

Plaintiff in error, Regents of the University System of Georgia, comes now, within the time allowed by law, and assigning error on each and all of the rulings complained of as being contrary to law, tenders this Bill of Exceptions, and prays that the same be certified as provided by law and be transmitted to the Supreme Court of Georgia, in order that the error complained of may be considered and corrected, all as provided by law.

This 29 day of October, 1947.

Eugene Cook, Attorney General of Ga., Hamilton Lokey, Deputy Assistant Attorney General of Georgia, Margaret Hartson, Attorney, Attorneys for Regents of the University System of Georgia, Plaintiff in Error. P. O. Address: 201 State Capitol, Atlanta 3, Georgia.

[fol. 10] NOTICE

To: Honorable James A. Branch, Thomas B. Branch, Jr., Attorneys for W. E. Carroll, et al., Hurt Building, Atlanta, Georgia.

Please take notice that the above and foregoing Bill of Exceptions will be presented to Honorable Bond Almand, Judge of the Fulton Superior Court, for approval at the Fulton County Court House, Atlanta, Georgia at 3:00 p. m. Wednesday afternoon, October 29, 1947. You are invited to be present at that time.

This October 29, 1947.

Hamilton Lokey, Attorney for Regents of the University System of Georgia.

We the undersigned attorneys for W. E. Carroll, et al., plaintiffs in the above entitled matter, hereby acknowledge service of the above and foregoing notice, and acknowledge service of a copy of the proposed Bill of Exceptions in this case, and hereby waive the opportunity to be heard as to

whether the Bill of Exceptions as tendered is correct and complete.

This 29 day of October, 1947.

James A. Branch (by HL), Thomas B. Branch, Jr. (by HL), Attorneys for W. E. Carroll et al.

[fol. 11] ORDER APPROVING BILL OF EXCEPTIONS—October 29, 1947

GEORGIA, FULTON COUNTY.

I do certify that the foregoing bill of exceptions is true, and specifies all the evidence and specifies all of the record material to a clear understanding of the errors complained of; and the Clerk of the Superior Court of Fulton County is hereby ordered to make out a complete copy of such parts of the record in said case as are in this bill of exceptions specified, and certify the same as such, and cause the same to be transmitted to the Supreme Court, that the errors complained of may be considered and corrected.

This 29th day of October, 1947.

Bond Almand, Judge, Fulton Superior Court, (Atlanta Circuit).

ACKNOWLEDGMENT OF SERVICE

Due and legal service of the above and foregoing bill of exceptions is hereby acknowledged, copy received, all other and further service and notice of service waived; notice under Code Section 6-902A received. This acknowledgment of service is signed after the certification of the Bill of Exceptions by the trial judge.

This 29 day of October, 1947.

Smith, Kilpatrick, Cody, Rogers & McClatchey, Attorneys for the Fulton National Bank of Atlanta, Plaintiff in Error.

James A. Branch and Thomas B. Branch, Jr., Attorneys for W. E. Carroll, Clarence H. Calhoun, Mrs. Hattie J. Pickard, Mrs. Emma B. Moore and Sam Pickard, Trustee for Sam Pickard, Jr., Defendants in Error.

[fols. 12-13] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 14] In Superior Court of Fulton County

Petition—Filed June 18, 1947

Georgia, Fulton County:

The petition of W. E. Carroll, Clarence H. Calhoun, Mrs. Hattie J. Pickard, Mrs. Emma B. Moore and Sam Pickard, Trustee for Sam Pickard, Jr., shows as follows:

1. The defendants herein are the Regents of the University System of Georgia, a corporation under the laws of Georgia, and Fulton National Bank, a corporation. Each of said defendants has its principal office in said county and is subject to suit therein.

2. On the — day of April, 1943, the defendant, the Regents of the University System of Georgia, entered into a contract with the petitioners, a copy of which contract is hereto attached, marked Exhibit "A" and made a part thereof.

3. As will be seen by reference to said contract, petitioners sold said defendant, the Regents of the University System of Georgia, the shares of stock in Southern Broadcasting Stations, Inc., held and owned by said petitioners, amounting in the aggregate to 9,824 shares, for a consideration to be paid as specified in said contract.

4. As will be seen by reference to said contract, the said defendant, the Regents of the University System of Georgia, agreed and obligated itself to pay petitioners as the full purchase price of said shares of stock, a sum equal to 15 per cent of the net billings of Radio Station W.G.S.T., located in Fulton County, Georgia, of the sale of time on the air for any and all types of broadcasting visual and sound, including any and all revenues which may be derived from such sources as a result of any new develop-
[fol. 15] ments in the broadcasting field during the period in which the payments under said contract are to be made by said defendant.

The said contract further provides that the purchase should be deemed to have been consummated as of the 15th

day of April, 1943, and, for the purpose of calculating payments to be made petitioners, was to be effective from that date. The contract further provides that within ten days after the expiration of each month from and after the aforesaid effective date, said defendant, the Regents of the University System of Georgia, shall determine the net billings for said month and shall pay 15 per cent thereof to the "hereinafter named agent of the second parties and said monthly payments of 15 per cent of the net billings of said station shall exist and continue for a full period of 80¾ months and until January 6, 1950." The agent referred to to whom payments should be made is Fulton National Bank, Candler Building Branch, Atlanta, Georgia.

5. Fulton National Bank is named as defendant herein as it is a proper party to this action by reason of the fact that said contract provides that such payments should be made to it as agent as stated above.

6. Said defendant, the Regents of the University System of Georgia, paid the amounts which became due to petitioners under said contract up to and including the month of July 1945, but has neglected and failed to pay any of the amounts which became due and payable under said contract since that time.

7. Petitioners allege that for each month since July 1945 amounts have become due and payable to petitioners under [fol. 16] the terms of said contract and that a large amount is now due to petitioners under the terms of said contract, but petitioners are unable, for want of sufficient information, to set forth specifically and in detail the amount so due. It will require an accounting to determine the amounts due the petitioners as aforesaid.

8. Under the terms of said contract, the amount which accrued and became payable each month as representing 15 per cent of the net billings of radio station W.G.S.T. was due and payable within ten days after the expiration of each such month and would therefore bear interest from due dates thereof.

9. Payments due as aforesaid have not been made either to petitioners or to their said agent, Fulton National Bank.

10. Radio Station W.G.S.T. is held and owned by the defendant, the Regents of the University System of Georgia,

in trust for Georgia School of Technology and as will be seen by reference to said contract, said contract was made by said defendant for and on behalf of Georgia School of Technology.

11. All of the records showing the amounts of net billings of said Radio Station W.G.S.T. and the amounts for the sale of time on the air for any and all types of broadcasting are in possession, custody or control of the defendant, the Regents of the University System of Georgia, and it will be necessary that such records be audited and examined in order to ascertain the amount due petitioners. The amounts due on the said contract under the terms thereof would be payable to Fulton National Bank as the agent of petitioners and in turn would be payable by said [fol. 17] Fulton National Bank to petitioners according to the strict terms of the contract, but petitioners allege that in equity they are entitled to have an accounting to determine the amounts due and the interest thereon and to have a decree providing for the recovery of said amounts direct by petitioners.

12. Petitioners allege that the remedy at law is not as full, adequate and complete as is the remedy in equity.

Wherefore, petitioners pray as follows:

(1) That process issue requiring defendants to appear and answer this complaint;

(2) That there be an accounting to ascertain and determine the amounts due petitioners under the contract as set out in the foregoing petition and that by the judgment and decree of this Court the petitioners be awarded judgment for such amounts and interest thereon;

(3) That petitioners have such other and further relief as may be just and proper in the premises.

James A. Branch, Thos. B. Branch, Jr., Petitioners' Attorneys.

[fol. 18] EXHIBIT A TO PETITION

GEORGIA

Fulton County

This Agreement, entered into this — day of April, 1943, by and between The Regents of the University System of Georgia, the first party, and all of the Stockholders of Southern Broadcasting Station, Inc., the second parties, the names of whom and the number of shares of such stock owned by each of them being as follows:

Name	No. of Shares
Sam Pickard, Trustee	5,000
Clarence H. Calhoun	1,472
W. E. Carroll	1,176
Mrs. Hattie J. Pickard	1,176
Mrs. Emma B. Moore	1,000

Witnesseth

1. This contract is made by the first party for and on behalf of Georgia School of Technology.

2. The second parties and all of them desire to sell to the first party all the shares of stock owned by them respectively, in Southern Broadcasting Stations, Inc., and the first party desires to acquire said stock for the benefit of the Georgia School of Technology.

3. In consideration of the mutual promises and stipulations herein contained, the second parties hereby agree to and do sell and transfer to the first party all of the shares of stock owned by them in Southern Broadcasting Stations [fol. 19] Inc., aggregating 9,824 shares of common stock therein, and the first party hereby buys said capital stock from said second parties at and for the consideration hereafter stated.

4. The first party agrees to pay to the second parties and the second parties agree to accept from the first party, as the full purchase price of said shares of stock, a sum equal to fifteen (15%) per cent of the net billings of Radio Station WGST, located in Fulton County, Georgia, from the sale of time on the air for any and all types of broadcasting, visual or sound, including any and all revenues which may

be derived from such sources as a result of any new developments in the broadcasting field during the period in which the payments hereunder are to be made by the first party to the second parties hereto. The term "net billings" shall be construed as these words are known and understood in the radio industry and shall include only the net proceeds actually collected by Station WGST as a result of the operations of said Station. This purchase shall be deemed to have been consummated as of the 15th day of April, 1943, and for the purpose of calculating the payments to be made to the second parties, shall be effective from said date. Within ten (10) days after the expiration of each month from and after the aforesaid effective date of this contract, the first party shall determine the net billings for said month and shall pay fifteen (15%) per cent thereof to the hereinafter named agent of the second parties and said monthly payments of fifteen (15) per cent of the net billings of said Station shall exist and continue for a full period of eighty [fol. 20] and three-fourths (80¾) months and until January 6th, 1950; the amount to be paid for any fractional month during this time to be in proportion to the days involved. The books of the first party shall be open to inspection by the second parties, or their agent, at all reasonable times to the end that they may check the correctness of the net billings as ascertained by the first party for any period.

5. The second parties have, for their convenience, selected Fulton National Bank, Candler Building Branch, Atlanta, Georgia, as their agent to receive all payments for their account from the first party under this contract and the first party is hereby authorized and requested to deliver to said Agent all of said payments herein provided for and the receipt of said Agent for such payments shall be a complete discharge of all liability of the first party to the second parties for any payments so delivered to said Agent. This provision for the selection of an Agent by the second parties, together with the right of the first party to make payments hereunder to said Agent, is coupled with an interest and shall be irrevocable; and should any successor, executor or administrator or assign of any one of the second parties succeed to any of the rights of any one of said second parties in and to any of the sums to be paid hereunder, the first party shall nevertheless, have the right

to continue to make all payments provided for by this agreement to the said Agent which the second parties shall have selected, as herein provided, and no such successor, executor, administrator or assign of any one of the second parties hereunder shall have a right to demand the payment [fol. 21] of any of said sums other than by and through said Agent and in the manner herein provided for.

6. The first party agrees that it will in good faith undertake to have the Georgia School of Technology operate Station WGST in an efficient and satisfactory manner to the end that said Broadcasting Station may continue to earn and receive as large net billings as may be possible, having in view general business conditions and other factors which enter into and effect the results of such operations.

7. The second parties jointly and severally make the following warranties as an inducement to the first party to purchase the above-described capital stock, to-wit:

(a) That Southern Broadcasting Stations, Inc. does not have outstanding any other capital stock than the shares hereinbefore described and herein sold to the first party.

(b) That the second parties, respectively, own the fee simple title to the shares of stock hereinbefore set opposite their names; that there are no liens or encumbrances on said shares of stock, and that they, respectively, have a legal right to transfer the unencumbered title thereto to the first party.

(c) That there is attached hereto, marked "Exhibit A", an inventory of the assets of Southern Broadcasting Stations, Inc., which is a correct inventory.

(d) That there is attached hereto, marked "Exhibit B", a list of all of the contracts which Southern Broadcasting Stations, Inc., has now outstanding with any and all persons, whether with employees for services or with suppliers of goods, wares and merchandise, or with the labor unions or broadcasting systems or stations, or for any other purpose [fol. 22] whatsoever, including contracts of lease or rent, together with a statement of the liabilities involved thereunder; and that there do not exist any undisclosed contracts which impose any liability on Southern Broadcasting Stations, Inc.

(e) There is attached, marked "Exhibit C", a correct statement of all of the liquidated and known liabilities of Southern Broadcasting Stations, Inc. and also all of the known unliquidated claims against said Station and that there are no known demands or claims against said Station which are not disclosed in said Exhibit.

(f) That the said parties will indemnify the first party against any and all claims or demands of every character against Southern Broadcasting Stations, Inc., which are not herein disclosed and will indemnify and hold harmless the first party against all damages, loss and costs which the first party may, directly or indirectly, sustain, suffer or endure by reason of any such undisclosed claim or demand whether known or unknown; and should the first party suffer any such loss, damage or cost, it is hereby authorized to withhold a sufficient amount of the purchase price of said capital stock to reimburse itself in full therefor.

(g) Ad Valorem taxes of all kinds against Southern Broadcasting Stations, Incorporated, or its properties for the year 1943 shall be pro-rated to April 15, 1943, and the party of the first part may deduct from payments to be made to parties of the second part or their agent the proportionate share of the taxes up to the date of proration. Income taxes both state and federal, on 1943's income will [fol. 23] be similarly pro-rated, and the proportion up to the time of proration may similarly be deducted by the party of the first part from payments hereunder. The party of the second part warrants that other than the 1943 ad valorem taxes and income taxes on 1943's income as herein set out there are no tax liabilities of any kind, either ad valorem, license or income taxes, either known or unknown against the Southern Broadcasting Stations, Inc., or its properties. Should there hereafter develop any such liabilities of any kind, the party of the second part agrees to indemnify the party of the first part against same, and ~~any~~ amounts of such taxes together with interest and penalties, if any, which may be hereafter established, may be deducted by the party of the first part from the payments of the purchase price under this contract as herein provided.

(h) The second parties will cooperate with the first party and with the Georgia School of Technology as opportunities

may present themselves in an effort to maintain the present commercial relations between WGST and any and all broadcasting systems and stations with which it has been doing business and the second parties will not during the life of this contract, hire any of the employees now actually engaged in the operation of Station WGST or in soliciting or handling the sale of time on said Station, without the consent of the President of Georgia School of Technology.

8. The second parties will file with the first party a copy of the agreement made between them and their aforesaid Agent which is to collect and receive from the first party the purchase price of said capital stock.

[fol. 24] In witness whereof, the first party has hereunto fixed its seal and has had this instrument signed by its Chairman, by and under the authority of a resolution of The Board of Regents of the University System of Georgia, and the second parties have hereunto affixed their signatures and seals, the day and year first above written.

The Regents of the University System of Georgia, by (S.) Marion Smith, Chairman, W. E. Carroll (LS), Hattie J. Pickard (LS), Clarence H. Calhoun (LS), Mrs. Emma B. Moore (LS), Sam Pickard, Trustee (LS), for Trust of Sam Pickard, Jr. (Seal.)

[File endorsement omitted.]

[fol. 25] IN SUPERIOR COURT OF FULTON COUNTY

[Title omitted]

ANSWER OF THE FULTON NATIONAL BANK OF ATLANTA—Filed July 2, 1947

Now comes The Fulton National Bank of Atlanta, named as a defendant in the above case, and answers the petition as follows:

1. The allegations of the following paragraphs are admitted: Paragraphs 1 and 5.

2. Answering Paragraphs 2, 3 and 4, the allegations of the petition refer to the provisions of a contract attached to the petition, which speaks for itself as to its terms.

3. Defendant can neither admit nor deny, for want of sufficient information, the allegations of the following paragraphs: Paragraphs 6, 7, 8, 9, 10, 11 and 12.

Further answering the petition defendant shows as follows:

4. As is alleged in the petition, this defendant was named as agent to receive payments to be made by the Regents of the University System of Georgia under the contract attached to the petition. This defendant did act as such agent and received payments from the Regents of the University System of Georgia for the period from April 15, 1943, through the period January 1945, the total amount so received being $91,227.39. Defendant disbursed such funds in accordance with the contract attached to the petition, except for the sum of $53.05, which could not be disbursed equally to the parties entitled thereto, which is now still held by this defendant. Defendant offers to pay into court [fol. 26] or otherwise, as the court may direct, the said sum of $53.05, this defendant claiming no interest therein.

Wherefore, defendant prays that it be dismissed hence without costs.

Smith, Kilpatrick, Cody, Rogers & McClatchey,
Devereaux F. McClatchey, Attorneys for The Fulton National Bank of Atlanta.

[File endorsement omitted.]

IN SUPERIOR COURT OF FULTON COUNTY

[Title omitted]

ANSWER OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA—Filed August 15, 1947

Now comes Regents of the Universty System of Georgia, named as a defendant in the above case, and answers the petition as follows:

1. Defendant admits the allegations of Paragraphs 1, 2, 3, 4, 5 and 10 of plaintiff's petition.

2. Answering Paragraph 6, defendant admits that it paid to petitioners' agent, the Fulton National Bank, sums equivalent to 15% of its net billings, as per contract up through the month of July 1945, and has made payments to [fol. 27] petitioners the total sum of $149,408.38. Defendant further admits that it has made no further payments to petitioners or their agent under said contract for the reasons set out more fully hereinafter.

3. Answering Paragraph 7, defendant shows that since making the payment under said contract for the month of July 1945, it has made no further computations to determine what 15% of its net billings to date amount to. Further answering said paragraph, defendant shows that it has in its possession the basic data from which said computations can be made and prior to the time of trial defendant by amendment ~~will~~ set out said computations. Defendant denies, however, that any such sums are due to petitioners for the reasons set out hereinafter.

4. Answering Paragraph 8, defendant shows that the terms of the contract referred to speak for themselves. The right to collect interest on past due payments is a legal conclusion requiring no answer. Defendant shows, however, that it is not indebted to petitioners in any amount for the reasons set out more fully hereinafter.

5. Answering Paragraph 9, defendant admits it has made no payments to petitioners or their agents other than those admitted in Paragraph 2 of this answer. Further answering, defendant denies that any further payments are due to petitioners for the reasons more fully set out hereinafter.

6. Answering Paragraph 11, defendant admits that it has possession, custody and control of the records of Radio Station WGST. The remaining allegations of said para- [fol. 28] graph are conclusions of law requiring no answer from this defendant, except that this defendant denies that it is indebted in any amount to petitioners for the reasons more fully set out hereinafter.

7. The allegations of Paragraph 12 constitute a legal conclusion requiring no answer.

8. Further answering said petition, defendant shows that it is not indebted to petitioners in any amount by reason of the following facts:

9. That on January 31, 1940, defendant filed an application for renewal of its broadcasting license with the Federal Communications Commission, (hereinafter referred to as the FCC), the governmental authority to which the Congress of the United States had delegated control and regulation of licenses for radio broadcasting stations. A copy of the application for license renewal is attached hereto as Exhibit "A", and incorporated herein by reference. Without such a license from the FCC, Radio Station WGST could not have lawful operated. At said time Radio Station WGST was being operated for defendant by a corporation known as Southern Broadcastintg Stations, Inc. under a contract which by its terms had until January 6, 1950 to run. The capital stock of said corporation was owned by the petitioners herein.

10. That the FCC challenged the propriety and legality of the further operation of Radio Station WGST by defendant through Southern Broadcasting Stations, Inc. as being not in the public interest, and as being in contravention of the Federal Communications Act. That after hearing, the FCC issued proposed findings of fact and conclusions of the Commission on March 23, 1943. A copy of said proposed findings of fact and conclusions of the Commission [fol. 29] is hereto attached as Exhibit "B" and incorporated herein by reference. During said proceedings before the FCC defendant was permitted to continue operations of Station WGST under temporary licenses.

11. That thereafter on May 8, 1943 the FCC issued its order adopting the proposed findings of fact and conclusions of the Commission of March 23, 1943 as the findings of fact and conclusions of the Commission relative to defendant's application for license renewal. By said order the application of defendant for a renewal of its license was denied, without prejudice to the filing of a further application for renewal of license in accordance with the conclusions reached by the FCC, such further application to be filed within 60 days and to set forth the plan of defendant for the acquisition of the necessary facilities and equipment owned by Southern Broadcasting Stations, Inc., and the acquisition of the business management, representation and control of the future operations of Station WGST, which were then vested in Southern Broadcasting Stations,

Inc. until January 6, 1950, by virtue of the contract referred to in Paragraph 9 of this answer. A copy of said order is hereto attached as Exhibit "C" and incorporated herein by reference.

12. That thereafter, on May, 22, 1943 defendant filed a further application for renewal of its license, a copy of said application being attached hereto as Exhibit "D" and incorporated herein by reference. As an exhibit to said application defendant attached a copy of the contract of April 15, 1943, upon which this present suit is based as its plan for acquiring the necessary facilities and equip- [fol. 30] ment of Southern Broadcasting Stations, Inc., including the business management, representation and control of the future operations of the radio station. By said contract defendant acquired all the capital stock of Southern Broadcasting Stations, Inc., procured the transfer of all the assets of said corporation to defendant and thereafter, in July of 1943 dissolved said corporation by surrendering its charter in Fulton Superior Court.

13. That thereafter, on October 12, 1943 the FCC assigned for hearing the matter of defendant's application for license dated May 22, 1943. A copy of the notice of assignment is hereto attached as Exhibit "E", and incorporated herein by reference.

14. That in response to said notice of assignment defendant petitioned the FCC to grant its license without hearing. A copy of said petition is hereto attached as Exhibit "F" and incorporated herein by reference.

15. That on November 23, 1943 the petition of defendant (Exhibit "F") was denied by the FCC. A copy of the order of denial is hereto attached as Exhibit "G" and incorporated herein by reference.

16. That thereafter said matter was heard by the FCC and testimony was given by witnesses for defendant, including Hon. Ellis Arnall, Governor of Georgia, Mr. Marion Smith, Chairman of the Board of Regents, Sandy Beaver and Frank M. Spratlin, members of the Board of Regents, T. Grady Head, Attorney General of Georgia, and John Fulton, manager of Radio Station WGST. After consideration of [fol. 31] said application and the testimony presented by defendant, the FCC issued proposed findings of fact and

conclusions of the Commission on September 19, 1945. A copy of said proposed findings of fact and conclusions of the Commission is attached hereto as Exhibit "H" and incorporated herein by reference.

17. That upon receipt of notice of the action of the FCC of September 19, 1945, defendants made no further payments to petitioners under said contract of April 15, 1943, and on October 11, 1943 the Board of Regents, the governing body of defendant, passed a formal resolution directing that defendant make no further payments under said contract. A copy of the resolution of October 11, 1945 is attached hereto as Exhibit "I" and incorporated herein by reference.

18. That thereafter, on November 9, 1945 the FCC issued its order adopting the proposed findings of fact and conclusions of the Commission of September 19, 1945 as the findings of fact and conclusions of the Commission relative to defendant's second application for license renewal. By said order the second application of defendant for a renewal of its license was denied, without prejudice to the filing of further application for renewal, by December 18, 1945, provided defendant affirmatively showed that it was giving no further effect to the contract of April 15, 1943, (the contract upon which this suit is based.) A copy of said order is hereto attached as Exhibit "J" and incorporated herein by reference.

19. That thereafter on December 4, 1945 defendant filed its third application for renewal of its license. A copy of said application is hereto attached as Exhibit "K" and [fol. 32] incorporated herein by reference. At the same time defendant filed an application for a construction permit. As an exhibit to both applications defendant attached a statement affirmatively showing its actions in regard to the contract of April 15, 1943. A copy of said statement is attached hereto as Exhibit "L" and incorporated herein by reference.

20. That thereafter, on March 7, 1946 the FCC issued to defendant the license applied for on December 4, 1945, said license covering the period from March 7, 1946 to May 1, 1947. A copy of said license is attached hereto as Exhibit "M" and incorporated herein by reference.

4. Is applicant a citizen of the United States? Yes

If so, state whether by birth or naturalization Created by act of Ga. Legislature

5. Is the applicant a representative of an alien or foreign government? No

1. Name of applicant Georgia School of Technology

2. Post-office address: State Georgia City Atlanta

Street and number North Avenue at Cherry Street

3. What is applicant's principal business? Technological School

(a) What other business or businesses is applicant directly or indirectly interested in; explain fully? None

(b) If applicant is a corporation, give the names and addresses of the officers, directors, and principal stockholders and state specifically what other business or businesses each of these parties is directly or indirectly interested in; explain fully? (Attach additional sheets if necessary.)

State owned school

4. Is applicant a citizen of the United States? Yes

If so, state whether by birth or naturalization Created by act of Ga. Legislature

5. Is the applicant a representative of an alien or foreign government? No

6. State whether applicant is a corporation, partnership, or association State owned institution

7. If applicant is a corporation—

(a) Under laws of what State or country is it organized? Created by Ga. Legislature

(A copy of the articles of incorporation duly certified by the Secretary of State shall be attached if not heretofore filed with the Commission)

(b) Is more than one-fifth of capital stock owned of record or may it be voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country? No

* Name must be identical with that used in existing law.

(1)

EXHIBIT "A" TO ANSWER

UNITED STATES OF AMERICA

FEDERAL COMMUNICATIONS COMMISSION

APPLICATION FOR RENEWAL OF REGULAR BROADCAST STATION LICENSE

(Submit in duplicate to Federal Communications Commission, Washington, D. C. Swear to one copy)

To the Federal Communications Commission:

1. Name of applicant Georgia School of Technology

2. Post-office address: State Georgia City Atlanta

Street and number North Avenue at Cherry Street

3. What is applicant's principal business? Technological School

(*a*) What other business or businesses is applicant directly or indirectly interested in; explain fully? None

(*b*) If applicant is a corporation, give the names and addresses of the officers, directors, and principal stockholders and state specifically what other business or businesses each of these parties is directly or indirectly interested in; explain fully? (Attach additional sheets if necessary.)

State owned school

(c) Is any director or officer an alien? No . If so, state name, citizenship, and position of each

(d) Give names and addresses and citizenship of all stockholders owning and/or voting 10 per-cent or more of applicant's stock and percentage of stock held by each

None

8. If applicant is a corporation, is applicant directly or indirectly controlled by any other corporation?

Not a corporation

(a) If so, give name and address of such controlling corporation

(b) Under laws of what State or country is such corporation organized? (A copy of the articles of incorporation properly certified by the Secretary of State shall be attached if not heretofore filed with the Commission)

(c) Is more than one-fourth of capital stock of such corporation owned of record or may it voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country?

(d) Is any director or officer of such corporation an alien? Is so, state name, citizenship, and position of each

(e) Is the above-described controlling corporation in turn a subsidiary?
If so, attach additional sheets answering questions 8 (a) to (d), inclusive, for each company to and including the organization having final control.

9. (a) If application is made in behalf of a copartnership, there must be filed a certified copy of the articles of copartnership (unless heretofore filed).

(b) If application is made in behalf of an unincorporated association, there must be filed a certified copy of the articles of association and bylaws (unless heretofore filed), showing the purpose of the association.

Applicant must also show—

(1) The names, addresses, and citizenship of the officers and the offices held by each

M. L. Brittain, President of Georgia School of Technology, whose address is 204 North Avenue, Atlanta,

(2) The number of members No members

(3) Whether any members are aliens None

(4) Name, citizenship, and position of each alien None

10. (a) Is applicant directly or indirectly, through stock ownership, contract, or otherwise, interested in the ownership or control of any other radio broadcasting stations? No

(b) If so, state call letters and location of such stations None

(c) Has the applicant in the past been directly or indirectly interested in the ownership or control of any radio broadcasting stations? No

(d) If so, state call letters and location of such stations None

1. (a) State applicant's relation to station (whether applicant is owner or lessee, and, if neither owner nor lessee, state nature of applicant's interest in use and control of station) (If not owner, a

copy of agreement showing applicant's interest in station must be attached if not heretofore filed with the Commission)

(b) If applicant is not owner of station, who is? Applicant

(c) Does applicant have absolute control of station, both as to physical operation and programs broadcast? Applicant has supervision of programs and operation. Employment contract on file with F.C.C.

(If not, attach copy of any contract which may in any way affect applicant's right to do so)

2. Attach detailed financial statement showing applicant's assets and liabilities and state fully the facts showing applicant's financial responsibility with respect to the operation of station.

3. (a) Has the applicant been finally adjudged guilty by any Federal court of unlawfully monopolizing, or attempting unlawfully to monopolize, radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangements, or any other means, or of unfair methods of competition? No

21. That from the time in 1940 when defendant's previous license expired, until March 7, 1946 when defendant's subsequent license was issued, defendant operated Station WGST under temporary licenses granted by the FCC.

22. That thereafter, on April 17, 1947, a further renewal of defendant's license was granted by the FCC, said license covering the period from May 1, 1947 to May 1, 1950. Defendant is now operating said radio station under and by authority of said license. A copy of said license is hereto attached as Exhibit "N" and incorporated herein by reference.

23. That performance of the contract of April 15, 1943 became impossible after September 19, 1945 by reason of the actions of the FCC as set out heretofore, and that said impossibility resulted from an act of law. Further performance of said contract is therefore excused.

[fol. 33] 24. That Southern Broadcasting Stations, Inc., which was owned by petitioners prior to April 15, 1943, was a party (as intervenor) to the proceedings before the FCC which resulted in the proposed findings of fact and conclusions of the Commission of March 23, 1943, and the final order of the FCC of May 18, 1943 (Exhibits "B" and "C"). These proceedings were designated by the FCC as "Docket No. 5903."

25. That petitioners had actual knowledge of the filing of the second application for renewal of license, referred to in Paragraph 12 of defendant's answer, and designated by the FCC as "Docket No. 6534." That petitioners also had actual knowledge of the notice of hearing dated October 12, 1943, referred to in Paragraph 13 of defendant's answer. That petitioners had actual knowledge of the hearing before the FCC and of the proposed decision of the FCC of September 19, 1945, both referred to in Paragraph 16 of defendant's answer. That petitioners also had actual knowledge of the final order of the FCC dated November 9, 1945, referred to in Paragraph 18 of defendant's answer. That the petitioners had actual knowledge of the above matters at the time said matters were taking place, and that under the law, petitioners had the right to intervene as parties at interest in Docket No. 6534, the same as Southern Broadcasting Stations, Inc. had intervened in Docket No. 5903.

26. That at the time petitioners entered into said contract of April 15, 1943 with defendant, they knew that the operation of said radio station depended upon the grant of a license to so operate from the FCC, and that said opera [fol. 34] tion was subject to federal regulation and control under the Communications Act of 1934, as administered by the FCC. Petitioners also knew that under said Communications Act of 1934 the FCC had jurisdiction over any contract or agreement affecting the operation of a radio station in the public interest or affecting the present or future financial ability of a radio station to operate in the public interest. That the FCC in its orders of September 19, 1945 and November 9, 1945 (Exhibits "H" and "J") found the contract of April 15, 1943 to be such a contract over which it had jurisdiction. That the FCC had jurisdiction over the subject matter and over said contract.

27. That the sum of $149,408.38 paid to petitioners under said contract prior to the orders of the FCC of September 19, 1945 and November 9, 1945 (Exhibits "H" and "J") was substantially in excess of the fair market value as of April 15, 1943 of all physical properties, equipment and other assets received by defendants from petitioners or Southern Broadcasting Stations, Inc.

28. That the license under which radio Station WGST was operating in April of 1943 was a temporary license and extension of its prior license. That said license and extension has expired. That the license under which Station WGST has operated since March 7, 1946 was predicated upon a disaffirmance by defendant of the contract of April 15, 1943 with petitioners, and defendants could not have acquired its license to operate, and could not have operated legally, had it not disaffirmed said contract.

[fol. 35] Wherefore, having fully answered, defendant prays that it be dismissed hence and with its reasonable costs.

Eugene Cook, Attorney General of Georgia, Hamilton Lokey, Deputy Assistant Attorney General of Georgia.

(*b*) Power: (1) Night 1000 watts.

(2) Day 5000 watts.

(*c*) Hours of operation Unlimited

(Should be stated exactly as in existing license)

(*d*) Call letters WGST

16. If application is for renewal of special broadcast station license, supply the following information and attach to this application a supplemental report setting forth—

(*a*) Comprehensive summary of all research and experimentation conducted

(*b*) Conclusions and outline of proposed program for further research and development

(*c*) Number of hours operated, and the percentage of these hours sponsored programs were broadcast

(*d*) Fidelity characteristics of the equipment, including the transmitter, studio equipment, and telephone lines over which programs are regularly carried from the studio to the transmitter and the methods used to determine such characteristics

Under existing license, state—

(a) Average percent of time per month, devoted to—

Commercial programs		Sustaining programs	
(1) Entertainment	42.21%	(1) Entertainment	37.3%
(2) Educational	5.63%	(2) Educational	4.91%
(3) Religious		(3) Religious	2.50%
(4) Agricultural		(4) Agricultural	1.21%
(5) Fraternal		(5) Fraternal	1.01%
(6) News	3.61%	(6)	1.62%

(b) Average number of hours sold per month before 6 p. m. 188, after 6 p. m. 104

(c) Average number of hours used per month in interest of applicant 2 hrs. educational

(d) Average number of hours per month station has operated during present license period 544.42

(1) Before 6 p. m. 360.42 (2) After 6 p. m. 184.

(e) Does applicant sell time? Yes

(f) If applicant does not sell time, how is station supported? ____

(g) Average number of hours per month of sponsored program is 282, of which direct advertising programs is 42.3 hours.

(h) Are merchandise prices quoted in interest of applicant? No, or others? Yes

(i) Average amount of money per month spent for—

(1) Talent, $ 1,208.08 (2) Other purposes, $ 12,422.00

(j) Average gross income per month from station operation, $ 22,329.00

8. Description of transmitting apparatus which is now licensed and for which a renewal of license is requested.

(a) Make RCA Type No. 5-C Serial No. BC-1548

(b) Oscillator: Type of circuit Crystal-RCA Type UL-4252-A Temperature Controlled / Number, manufacturer's name, and type of tubes Two RCA 843 Tubes

Actual plate current per tube 14 to 20 milliamperes / Plate voltage 240-275 volts

(c) Last radio stage: Number, manufacturer's name, and type of tubes

Two RCA 892 Tubes

Actual night operation—Plate current per tube 0.36 amp Plate voltage 7200

If greater day power than night power is authorized, specify the following

(e) Modulator or last audio stage: Number, manufacturer's name, and type of tubes ___

Four RCA 845 Tubes

Actual plate current per tube 45 milliamperes Plate voltage 1,000

(e) What maximum percentage of modulation is maintained during regular operation? 100

(f) What modulation measuring device is used to determine that this percentage of modulation is maintained? General Radio Type 731-A Monitor

(g) Specify manufacturer's name, type number, and full scale reading of the following meters:

(1) In last radio stage:

Plate voltmeter Westinghouse Type KX 15,000 volt Serial No. 1,278,993

Plate ammeter Westinghouse Type KX 2.5 amp. Serial No. 1,278,580

(2) Antenna ammeter Weston Model 640-12.5 amp Serial No. 907

(h) Antenna current for authorized operation: Night 4.32 amperes. Day 9.65 amperes.

(i) Maximum operating carrier power output of transmitter for satisfactory operation is 5000 watts.

(j) Maximum rated carrier power of transmitter as determined by orders of the Commission is 5000 watts.

(k) State name and type number of frequency monitor in operation General Radio Model 575-D Oscillator-Model 581, Deviation Meter

(l) When was the last check of this monitor made with an external standard 12-26-39

(m) How often are the checks of the calibration made Weekly

(n) Are all operating values specified above regularly maintained? Yes

If not, give full details

10. (a) In what respect, if any, does the apparatus, antenna, or operation differ from that described in the last application for license or renewal of license? None

(If none, so state)

(b) If any changes whatsoever have been made in the fundamental audio or radio circuit of the transmitter affecting the schematic diagram heretofore filed with the Commission, the appli

(b) Under laws of what State or country is such corporation organized? _____
(A copy of the articles of incorporation properly certified by the Secretary of State shall be attached if not heretofore filed with the Commission)

(c) Is more than one-fourth of capital stock of such corporation owned of record or may it voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country? _____

(d) Is any director or officer of such corporation an alien? _____ If so, state name, citizenship, and position of each _____

(e) Is the above-described controlling corporation in turn a subsidiary? _____ If so, attach additional sheets answering questions 8 (a) to (d), inclusive, for each company to and including the organization having final control.

a) If application is made in behalf of a copartnership, there must be filed a certified copy of the articles of copartnership (unless heretofore filed).

b) If application is made in behalf of an unincorporated association, there must be filed a certified copy of the articles of association and bylaws (unless heretofore filed), showing the purpose of the association.

Applicant must also show—

(1) The names, addresses, and citizenship of the officers and the offices held by each _____

M. L. Brittain, President of Georgia School of Technology, whose address is 204 North Avenue, Atlanta, Georgia, a citizen of the United States of America by birth, is appointed by the Regents of the University System of Georgia.

(2)

10. (a) Is applicant directly or indirectly, through stock ownership, contract, or otherwise, interested in the ownership or control of any other radio broadcasting stations? No

(b) If so, state call letters and location of such stations None

(c) Has the applicant in the past been directly or indirectly interested in the ownership or control of any radio broadcasting stations? No

(d) If so, state call letters and location of such stations None

11. (a) State applicant's relation to station (whether applicant is owner or lessee, and, if neither owner nor lessee, state nature of applicant's interest in use and control of station) (If not owner, a

copy of agreement showing applicant's interest in station must be attached if not heretofore filed with the Commission)

(b) If applicant is not owner of station, who is? Applicant

(c) Does applicant have absolute control of station, both as to physical operation and programs broadcast? Applicant has supervision of programs and operation. Employment contract on file with F.C.C.

(If not, attach copy of any contract which may in any way affect applicant's right to do so)

12. Attach detailed financial statement showing applicant's assets and liabilities and state fully the facts showing applicant's financial responsibility with respect to the operation of station.

13. (a) Has the applicant been finally adjudged guilty by any Federal court of unlawfully monopolizing, or attempting unlawfully to monopolize, radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangements, or any other means, or of unfair methods of competition? No

(b) Is applicant directly or indirectly controlled by any party finally adjudged guilty as above stated?

No

(Answer yes or no)

14. File number and date of license sought to be renewed B-S-R-411. Aug. 8, 1939

15. The existing license authorizes the use of—

(a) Frequency 880 kilocycles.

(b) Conclusions and outline of proposed program for further research and development .....

.....

.....

.....

(c) Number of hours operated, and the percentage of these hours sponsored programs wer broadcast .

.....

(d) Fidelity characteristics of the equipment, including the transmitter, studio equipment, and telephone lines over which programs are regularly carried from the studio to the transmitter and the methods used to determine such characteristics .....

.....

.....

.....

544.42

(1) Before 6 p. m. 360.42 (2) After 6 p. m. 184.

(e) Does applicant sell time? Yes

(f) If applicant does not sell time, how is station supported? ____

(g) Average number of hours per month of sponsored program is 282 , of which direct advertising programs is 42.3 hours.

(h) Are merchandise prices quoted in interest of applicant? No , or others? Yes

(i) Average amount of money per month spent for—

(1) Talent, $ 1,208.08 (2) Other purposes, $ 12,422.00

(j) Average gross income per month from station operation, $ 22,329.00

Description of transmitting apparatus which is now licensed and for which a renewal of license is requested.

(a) Make RCA Type No. 5-C Serial No. BC-1548

(b) Oscillator: Type of circuit Crystal-RCA Type UL-4252-A Temperature Controlled / Number, manufacturer's name, and type of tubes Two RCA 843 Tubes

Actual plate current per tube 14 to 20 / milliamperes Plate voltage 240-275 volts

(c) Last radio stage: Number, manufacturer's name, and type of tubes

Two RCA 892 Tubes

Actual night operation—Plate current per tube 0.36 amp Plate voltage 7200

If greater day power than night power is authorized, specify the following:

Actual day operation—Plate current per tube 0.75 amps Plate voltage 15,750

Describe fully the method and procedure of reducing power at sunset By means of relay switching the final plate voltage is reduced to ½ the normal value; simultaneously, the plate voltage of the modulated amplifier is reduced to an optimum value. At the same time, a load resistor is added to the modulator output to maintain a constant load.

(g) Antenna manufactured ..... Serial No. .....

(h) Antenna current for authorized operation: Night 4.32 amperes. Day 9.65 amperes.

(i) Maximum operating carrier power output of transmitter for satisfactory operation is 5000 watts.

(j) Maximum rated carrier power of transmitter as determined by orders of the Commission is 5000 watts.

(k) State name and type number of frequency monitor in operation General Radio Model 575-D Oscillator-Model 581, Deviation Meter

(l) When was the last check of this monitor made with an external standard 12-26-39

(m) How often are the checks of the calibration made Weekly

(n) Are all operating values specified above regularly maintained? Yes

If not, give full details .....

19. (a) In what respect, if any, does the apparatus, antenna, or operation differ from that described in the last application for license or renewal of license? None
(If none, so state)

(b) If any changes whatsoever have been made in the fundamental audio or radio circuit of the transmitter affecting the schematic diagram heretofore filed with the Commission, the applicant represents that there is attached an accurate corrected diagram.

20. (a) Type of antenna Vertical

(b) Height of vertical lead 279 feet.

(c) Length of flat top (if any) None feet.

(6)

(e) Counterpoise (if used) type and dimensions None

(f) Antenna ground (if used) how obtained? 180 radials 300 ft. long

21. (a) Give maximum height (in feet) of towers or antenna above ground level: 289 ft.

(b) Are towers painted and marked with signal lights to conform with specifications of Department of Commerce (see Aeronautics Bulletin No. 474)? Yes

22. Location of transmitter: State Georgia County Fulton

City or town Near Atlanta Street and number Cheshire Bridge Road at Seaboard Ry.

North latitude: Degrees 33 , minutes 48 , seconds 38.4

West longitude: Degrees 84 , minutes 21 , seconds 44

23. Location of main studio: State Georgia County Fulton

City or town Atlanta Street and number 90 Forsyth St.

Other studios None

24. Specify actual periods station has been operated since effective date of existing license:

	A.M.	P.M.	Total daily hours
Sunday	7:45	12 midnight	16¼
Monday	6:00	12 "	18
Tuesday	6:00	12 "	18
Wednesday	6:00	12 "	18
Thursday	6:00	12 "	18
Friday	6:00	12 "	18
Saturday	6:00	12 "	18

25. If station shares time, give following data:

(a) Shares with what stations? None

(b) Does applicant represent that the time-sharing agreement (in triplicate) attached complies with the orders of the Commission? _____ If not, give explanation _____

(Yes or no)

of Commerce (see Aeronautics Bulletin No. 474)? Yes

22. Location of transmitter: State Georgia County Fulton

City or town Near Atlanta Street and number Cheshire Bridge Road at Seaboard Ry.

North latitude: Degrees 33 , minutes 48 , seconds 38.4

West longitude: Degrees 84 , minutes 21 , seconds 44

23. Location of main studio: State Georgia County Fulton

City or town Atlanta Street and number 90 Forsyth St.

Other studios None

24. Specify actual periods station has been operated since effective date of existing license:

	A.M.	P.M.	Total daily hours
Sunday	7:45	12 midnight	16¼
Monday	6:00	12 "	18
Tuesday	6:00	12 "	18
Wednesday	6:00	12 "	18
Thursday	6:00	12 "	18
Friday	6:00	12 "	18
Saturday	6:00	12 "	18

25. If station shares time, give following data:

(a) Shares with what stations? None

(b) Does applicant represent that the time-sharing agreement (in triplicate) attached complies with the orders of the Commission? _____ If not, give explanation _____
(Yes or no)

26. Does station obtain programs from what is known as a "chain"? Yes

(a) Name of chain or chains Columbia Broadcasting System

(b) What is total hours per month of chain programs (i. e., programs, both paid or sustaining, which are duplicated by any other station)? _____

(c) The programs of what other regular broadcast stations, if any, are normally rebroadcast?

None

Total hours of rebroadcast programs during present license period None

27. (a) Attach program for week last preceding date of this application.

(b) Are phonographic records used? Yes If so, how many hours per month?

(c) Are other mechanical reproductions used? Yes If so, how many hours per month?

28. Is continuous watch maintained on ship-calling channel during operative hours? .....

29. Applicant's last application for station license is to be considered as part of this application and the truth of the statements therein contained is hereby reaffirmed, except insofar as the contrary expressly appears herein, and in the following particulars: None

30. Applicant waives any claim to the use of any particular frequency or of the ether as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests a renewal of applicant's existing license in accordance with this application.

Dated this 31st day of January , 1940

GEORGIA SCHOOL OF TECHNOLOGY

(Must correspond with Item 1) Applicant.

By M. L. Brittain,

President

(Be sure all necessary information is furnished) Official.

STATE OF GEORGIA
COUNTY OF FULTON } ss:

M. L. BRITTAIN, being first duly {sworn, upon his oath / affirmed according to law,

deposes and says that he is the President of the Georgia School of Technology

(If applicant is not an individual, state relation of affiant to applicant)

above-named applicant, and that the facts stated in the foregoing application and all exhibits attached thereto are true of his own knowledge, except as to such statements as are therein stated on information and belief, and as to such statements he believes them to be true.

M. L. Brittain

[fol. 44] EXHIBIT "B" TO ANSWER

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C.

B-170

File No. B3-R-411

Docket No. 5903

In re Application of GEORGIA SCHOOL OF TECHNOLOGY (WGST) ATLANTA, GEORGIA. For Renewal of License.

Appearances

Honorable Ellis G. Arnall, Attorney General for the State of Georgia; *John E. McClure, Esq.*, Special Attorney General for the State of Georgia; *Louis G. Caldwell, Esq.*, Special Assistant Attorney General for the State of Georgia; *Reed T. Rollo, Esq.*, Special Assistant Attorney General for the State of Georgia; and *Samuel D. Hewlett, Esq.*, Special Assistant Attorney General for the State of Georgia; on behalf of the applicant.

George B. Porter, Esq., and *Clarence H. Calhoun, Esq.*, on behalf of Southern Broadcasting Stations, Inc., Intervener.

Marcus Cohn, Esq., and *Russell Rowell, Esq.*, on behalf of the Commission.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION

Preliminary Statement

This proceeding arose upon an application, dated January 31, 1940, of Georgia School of Technology for a renewal license for operation of radiobroadcast station WGST, Atlanta, Georgia. Not being satisfied, upon examination of the application, that public interest, convenience or necessity would be served by the granting thereof, the Commission, on August 28, 1940, designated the matter for hearing. The hearing notice issued September 6, 1940, specified the following issues:

1. To determine whether applicant, while holding a license for this station has assumed the responsibil-

ities and discharged the duties of a licensee of a radiobroadcast station as required by the Act and the Commission's rules and regulations.

2. To determine whether applicant, either directly or indirectly, has transferred, assigned, or in any manner disposed of any of the rights granted in the station's license to any other person, firm or corporation, without having obtained the written consent of the Commission, in violation of the Communications Act of 1934, as amended, particularly Section 310(b) thereof.

[fol. 45] 3. To determine whether the station has been operated by any person without a license to do so granted by this Commission, in violation of the Communications Act of 1934, as amended, particularly Section 301 thereof.

4. To determine whether the granting of this application and the continued operation of the station will serve public interest, convenience and necessity.

On October 9, 1940, the issues were supplemented by adding thereto the following:

1. To determine the sources of funds for past and proposed construction, maintenance and operation of the station.

2. To determine whether applicant is financially qualified to operate the station.

The hearing was conducted before a duly qualified officer of the Commission on December 1-5, 1941, January 7-12, 1942, February 2-7, 1942, March 26, 1942, and April 24, 1942.

Findings of Fact

1. Georgia School of Technology, the applicant herein, is a major unit of the University System of Georgia, which is administered by a Board of Regents of sixteen members, including the Governor of the State and fifteen members appointed by him and confirmed by the State Senate. One appointment is for a term to be determined at the will of the Governor; and the other appointments are for six-year terms, arranged so as not to run concurrently.

2. Station WGST is a standard radiobroadcast station, presently allocated to operate on the regional frequency 920

kilocycles, with 1 kilowatt power night, 5 kilowatts day, unlimited hours of operation, located at Atlanta, Georgia.

3. The applicant acquired Station WGST in July 1923 from Clark Howell, Sr., publisher of the *Atlanta Constitution* and member of applicant's Board of Trustees, as a gift for the purpose, among others, of instructing students in radio. At that time the station was licensed under authority of the Department of Commerce to operate with a wave length of 270 meters, 500 watts power. The station has been considered as an endowment of applicant and is listed as such in its catalogue.

4. The operation of Station WGST was conducted by applicant's Experimental Engineering Department for a few years, but apparently difficulties were experienced in maintaining interest in its service. Thereafter the station was operated with the aid of certain young men who were employed to operate it for the applicant. Operation under this arrangement did not meet with much success, and on January 6, 1930, the applicant, through its Board of Trustees, made a contract with Southern Broadcasting Company, a partnership composed of William A. Clarkson, Walt Dob- [fol. 46] bins, and A. S. Foster, to operate the station for all except two hours per week of its alloted time for a period of ten years. The operating assignment of Station WGST, as then authorized under license from the Federal Radio Commission, was 890 kilocycles, 250 watts power, sharing time equally with Station WMAZ, Macon, Georgia.

5. The contract of January 6, 1930, included a declaration that Southern Broadcasting Company should operate Station WGST in all respects in conformity to the present and all future enacted laws of the Congress of the United States and regulations lawfully made in pursuance thereof. It was agreed that Southern Broadcasting Company should arrange the programs and attend to all details in connection therewith, but not allow any programs to be broadcast which were obnoxious or detrimental to the interests of the applicant, the applicant's president to be the judge as to what was obnoxious or detrimental. The contract provided that Southern Broadcasting Company should receive all the gross receipts of the station for the first 90 days of the contract period, and thereafter, all but 5% of the gross receipts for the first year, all but 6% for the second year, all but 7%

for the third year, all but 8% for the fourth year, and all but 10% for each year thereafter, settlements to be made monthly. The Board of Trustees and the applicant's officials were expressly given the right of access to the records of Southern Broadcasting Company for the purpose of examining and auditing them, and faculty and student body were given the right of access to the station under reasonable rules, subject to such regulations as not to interfere with proper operation of it by Southern Broadcasting Company. The contract provided that Southern Broadcasting Company should pay all expenses of whatever nature attendant upon the efficient operation of the station except the expenses incurred by applicant in producing programs for the two hours per week which it reserved in the contract. It was agreed that Southern Broadcasting Company should have no right to create any liability against the applicant through any contracts which it might make either in connection with construction or operation of WGST, or in connection with the broadcasting of programs thereof. The applicant agreed to cooperate with Southern Broadcasting Company to the extent of not attempting to limit the use of Station WGST in any fair and legitimate form of commercial activities, and at the same time it was agreed by both parties that the making of the contract should not release the licensee from its right and duty of exercising general control over the station under its license from the United States Government. The contract further provided that the applicant should not have any liability to Southern Broadcasting Company in the event of the cancellation of its license by the United States Government or any other action taken by the United States Government or its officers, boards or bodies regarding the use of radio stations.

6. On December 13, 1930, the applicant and Southern Broadcasting Stations, Inc., which had succeeded to the rights of Southern Broadcasting Company, agreed upon a stipulation to the effect that the applicant retained control of the operation of Station WGST with respect to the manner and means of its operation and of the physical equipment connected therewith, that the applicant retained control of all programs broadcast over the station, and that it would, through its proper officers and designated repre-

sentatives, exercise its right to approve all of the programs broadcast over the station at all times.

. . . . . .

[fol. 47] Applicant maintained supervision of programs and operation. The evidence with reference to the filing of applications shows that the application under consideration and prior applications were prepared by officers or employees of Southern Broadcasting Stations, Inc., and brought to the applicant's president merely for the signature and verification necessary for the filing of the same. It is apparent from the evidence regarding this matter that the applicant did not have in its possession adequate information to prepare the applicatons if it had undertaken to do so. Statements of its own witnesses show that it has not kept books, program logs, or records of any kind regarding the operation of the station.

10. After the action of the Commission designating the application under consideration for hearing, at a time approximately three or four months prior to the hearing, the management of Southern Broadcasting Stations, Inc., began the practice of sending the completed, published program schedule of Station WGST to the applicant; prior to that time the applicant's executive officer, designated to administer its responsibilities in connection with operation of the station, had no advance notice whatever as to what program material was to be broadcast and no information as to the programs broadcast except such as he might acquire through hearing a program from the station over the air. The applicant has not been consulted in connection with the purchase of equipment and apparatus used in the operation of the station, and since 1930 has made no contribution whatever for installation or maintenance of equipment in accordance with the standards prescribed in the regulations of the Commission. All arrangements for program material, excepting only a half-hour weekly program entitled "Georgia Tech Round Table of the Air", are made by Southern Broadcasting Stations, Inc., practically without reference to the applicant. The contract under which Station WGST obtains network programs from Columbia Broadcasting System is a contract

between the network and Southern Broadcasting Stations, Inc. Likewise, arrangements for news services, transcription services, and for employment of talent are arrangements which have been made by Southern Broadcasting Stations, Inc., without consultation with or approval of the applicant. The card rates of the station are established by Southern Broadcasting Stations, Inc., and at the date hearings began on the instant application, the executive officer responsible for administration of the applicant's interest and responsibilities, had not seen a schedule of rates and was uninformed as to the rates charged for the services of the station. The same officer was uninformed as to what the station's policy or practice might be with respect to whether or not certain types of advertising should be accepted.

11. The entire operating staff is provided by Southern Broadcasting Stations, Inc., and with few exceptions, the employees are practically unknown to applicant's executive officer. Mail addressed to applicant as licensee of WGST, including communications from the Commission, is referred, unopened, to Southern Broadcasting Stations, Inc., and along with mail addressed to Station WGST is received and handled as a matter of general practice by the operating company on its own responsibility.

12. The original equipment of Station WGST has been entirely replaced with equipment supplied by Southern Broadcasting Stations, Inc. While the transmitter and antenna are located on land which has been deeded to the applicant, pursuant to a demand made under the provisions of the contract of June 18, 1936, ownership of the apparatus is claimed by Southern Broadcasting Stations, Inc. The lease of studio facilities at another location is held by Southern Broadcasting Stations, Inc.

[fol. 48] 13. Substantially the only reports which have been made to the applicant in its position as licensee, concerning the operation of WGST have been monthly statements as to its share of the receipts, usually, merely the submission of a check with a notation such as "Royalty for December". The annual return increased from $2,026.19 for 1930, to $12,256 for 1935, and to $29,943.20 for 1940. Payments under the contract have been received over the greater part of the time without question, but when the

(P. 48) 6534-2

EXHIBIT "D" TO ANSWER

Form No. 303
(Revised Feb. 10, 1942)

File No. BS-Z-1441
Call Letters WGST

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION

APPLICATION FOR RENEWAL OF STANDARD BROADCAST STATION LICENSE

Submit in triplicate direct to the Federal Communications Commission, Washington, D. C. Swear to at least two copies.

Before executing application, see Communications Act of 1934, as amended, Part I (Rules of Practice and Procedure), Part III (Standard Broadcast Rules) and sec. 44.1 of the Commission's Rules and Regulations, and the Standards of Good Engineering Practice Concerning Standard Broadcast Stations.

To the Federal Communications Commission:

1. Name of applicant[1] Georgia School of Technology

2. Post-office address: Street and number North Avenue at Cherry Street

City Atlanta State Georgia

3. Is applicant a citizen of the United States? Yes

4. Is the applicant a representative of an alien or foreign government? No

5. Give the file number and date of the license sought to be renewed BS-Z-1441 - Dec. 20, 1938.

6. Operation authorized by the existing license and for which renewal of license is requested:

   (a) Frequency 920 kilocycles.

   (b) Power: (1) Night 1000 watts. (2) Day 5000 watts.

   (c) Hours of operation Unlimited

   (Should be stated exactly as in existing license. Time-sharing stations, limited time stations, and stations rebroadcasting programs of others shall file documents as specified by sections 3.74, 3.88 and 3.408, subsection (b), footnote 3, Rules of Practice and Procedure, respectively.)

7. (a) Do the reports filed by applicant under sec. 1.361 of the Rules of Practice and Procedure reflect substantially applicant's status with regard to all conditions stated in such reports as of the date this application was executed?[2] No. See Exhibit attached
   (Answer yes or no)

present application came up for hearing, the applicant, through its representatives, had asserted claims for additional amounts, claiming that its "royalties" should have been calculated on the basis of total receipts of Southern Broadcasting Stations, Inc., rather than after deductions for agency commissions, charges for talent on certain programs, and other similar items. The applicant had also asserted a claim for additional amounts due as its share of gross receipts from sales in which due bills had been accepted but not entered in the operating company's books.

14. The evidence discloses that over a long period of time, and without the applicant's knowledge or approval, Southern Broadcasting Stations, Inc., transacted a considerable volume of business involving the use of due bills; that due bills in substantial amounts received in such transactions were applied upon purchases of automobiles, jewelry, flowers, other merchandise, school tuition, and rent for the benefit of stockholders and officials of Southern Broadcasting Stations, Inc.; and that none of the sales made on this basis had been included in the determination of gross receipts for the purpose of calculating payments due the applicant under its contract. On November 28, 1941, as a result of the claims made during the pendency of the hearing, Southern Broadcasting Stations, Inc., submitted a supplemental statement of income for the year 1940 showing due bills in the amount of $14,618.10, and made an additional payment of $1,461.81 to the applicant. The applicant found it difficult to obtain information concerning due bill transactions for any period prior to 1940 owing to incompleteness of the available records or inability or refusal of officers of Southern Broadcasting Stations, Inc., to produce the same. An effort was made in November 1941 to trace due bill accounts through the station logs, but was defeated when logs could not be found for any period prior to January, 1940.[1]

15. Southern Broadcasting Stations, Inc., in its Petition to Intervene which was granted September 5, 1941, alleged that it owned all of the equipment used in the operation of Station WGST save alone the title to the ground on

[1] Commission's Rules, Section 3.405, require that logs be retained by the licensee for a period of two years.

which it is situated, and that it had in its possession all records, papers, contracts, and books of account pertaining to the operation of this station. The facts which the evidence shows regarding Southern Broadcasting Stations, Inc., indicate the part which this corporation and its officers and stockholders have had in the operation of Station WGST. The corporation was organized by Messrs. William A. Clarkson, Walt Dobbins and A. S. Foster, to succeed the partnership known as Southern Broadcasting Company. In December 1929, or early in 1930, Mr. C. H. Calhoun was engaged to do some legal work in connection with the organization of the corporation and acquired an interest through acceptance of [fol. 49] stock in lieu of payment for his fee for legal services and loans of money which he had advanced, the total indebtedness being about $750. Mr. W. E. Carroll, Atlanta, Georgia, became interested in the corporation in the early part of 1930, as a result of loans which he made to the organization. He paid in $1,500 for some 2,000 shares, the number of shares issued to him being reduced later in a redistribution of stock. Shortly after Calhoun acquirred his interest, he met Mr. Sam Pickard through his dealings with Columbia Broadcasting System, of which Mr. Pickard was vice president and director of station relations. Pickard became interested in Southern Broadcasting Stations, Inc., paying $5,000 for 5,000 shares of stock out of 8,800 shares then issued. The certificate for this stock was issued June 17, 1930. In September 1932, an associate of Mr. Pickard in the organization of the Columbia Broadcasting System, acquired 1,176 shares from Walt Dobbins. This stock, which was the last held by any of the original stockholders, was transferred to Mrs. Hattie Pickard in October 1935. The balance sheet of the corporation, as of November 1941, shows total assets of $186,181.34, and net worth of $132,862.81. There are 8,824 shares of capital stock issued, which are held as follows: Sam Pickard and members of his family, 6,176 shares, 69.99%; C. H. Calhoun, 1,472 shares, 16.68%; and W. E. Carroll, 1,176 shares, 13.32%. Mr. Pickard is employed as executive manager at $12,000 a year and receives a bonus of $15,000, provided the station makes $60,000 net for the stockholders. Mr. Calhoun is president of the corporation and is employed as general manager, receiving a salary of approximately $5,000 per annum. In 1940, these stockholders received salaries, dividends, bon-

nd other payments in the total amount of $113,080.50. vidence indicates that from the investments made 1930 to 1935, the present stockholders have realized ırn of approximately $500,000.

After the application for a renewal license for opera- f Station WGST was designated for hearing, a com- was appointed by the Board of Regents to undertake ations with Southern Broadcasting Stations, Inc., e purpose of securing changes in operating arrange- and practices to meet the issues raised in the notice ring. On eight different occasions the hearing of se was continued on petition of the applicant. ghout the course of these negotiations, which included eration of twenty or more proposed contractual ar- nents, Southern Broadcasting Stations, Inc., insisted maintenance of its freedom of action and a large f the income of the Station, finally refusing an ar- ment which would have given it 33⅓% of the income payment of salaries of $10,000 each to Pickard and un. The applicant's representatives found it difficult ertain the earnings of the station which it was licensed erate, obtaining such information as they did obtain bit, after repeated requests. Members of the com- were given to understand that arrangements would o be made with Southern Broadcasting Stations, Inc., either controlled or owned the equipment of the sta- nd also its network contract.[1]

3)] 17. In July 1941, while the Committee of the of Regents was negotiating with Southern Broad- g Stations, Inc., Messrs. Arthur Lucas and William nkins submitted an offer for a contract to operate the n in a letter addressed to the Governor of the State. rm of Lucas and Jenkins proposed to acquire the

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ontract signed February 15, 1934, by Sam Pickard alf of Columbia Broadcasting System, Inc., and C. H. un in behalf of Southern Broadcasting Stations, Inc., enewed February 15, 1939, for a term expiring August 4, subject to cancellation by Columbia on three years' . This contract was signed H. B. Akerberg for Colum- alhoun for Southern.

30. Applicant waives any claim to the use of any particular frequency or of the ether as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests a renewal of applicant's existing license in accordance with this application.

Dated this 31st day of January, 1940.

GEORGIA SCHOOL OF TECHNOLOGY
(Must correspond with item 1) *Applicant.*

By M. L. Brittain,
President
(Be sure all necessary information is furnished) *Official.*

STATE OF GEORGIA
COUNTY OF FULTON } ss:

M. L. BRITTAIN, being first duly { sworn, upon his oath / affirmed according to law,

deposes and says that he is the President of the Georgia School of Technology
(If applicant is not an individual, state relation of affiant to applicant)
above-named applicant, and that the facts stated in the foregoing application and all exhibits attached thereto are true of his own knowledge, except as to such statements as are therein stated on information and belief, and as to such statements he believes them to be true.

M. L. Brittain
Affiant.†

Subscribed and sworn to before me this 31st day of January, 1940

[SEAL]

Grace H. Waits
Notary Public.

(Notary public's seal must be affixed where law of jurisdiction requires, otherwise state that law does not require seal.)

My commission expires [illegible] Large
~~[illegible] Expires May [illegible], 1945~~

† Must be subscribed and verified by party applicant, by one of the parties if more than one, by an officer if applicant is a corporation, or by attorney of applicant only under the provisions of rule 106.34 which must be fully explained.

(8)

[illegible] U. S. GOVERNMENT PRINTING OFFICE

physical properties and plant of Station WGST by paying therefor the reasonable or true value of same or to erect and equip the station with the latest and most desirable broadcast facilities of a modern 5,000-watt station, operate the same and guarantee the applicant not less than $50,000 per year as the licensee's part of the profits from the operation. Lucas and Jenkins, according to testimony of both members of the firm, operate forty to fifty moving-picture theaters in the State of Georgia and have interests in five radio broadcast stations as follows: WRDW, Augusta; WSAV, Savannah; WLAG, La Grange; WMOG, Brunswick; WALB, Albany.[1] Lucas and Jenkins have attempted to secure an interest in WGST for some time, as indicated by offers to purchase or operate the station made in 1932 and again in 1936. They are also interested in a pending application for a permit to construct a new broadcast station at Columbus, Georgia.

18. Following the submission of the Lucas and Jenkins offer, it was suggested by representatives of the Committee, acting for the applicant and the Governor of the State, that it would be advisable for Southern Broadcasting Stations, Inc., and Lucas and Jenkins to combine their interests so that both might participate in such arrangements as might be made for the management of WGST. On August 10, 1941, Southern Broadcasting Stations, Inc., offered to sell Lucas and Jenkins a one-fourth interest in such arrangement as it might make for operation of WGST for $45,000, it being understood that Lucas and Jenkins should withdraw any offer theretofore made for operation of the station. On the same date, William K. Jenkins, acting in behalf of the firm of Lucas and Jenkins, notified Southern Broadcasting Stations, Inc., that in accordance with the agreement, the firm was withdrawing all offers which had been made for operation of WGST.

19. There were further negotiations between the applicant and Southern Broadcasting Stations, Inc., continuing to the date of the hearing, but when the applicant began

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[1]Lucas and Jenkins are not shown as holding an interest in WALB in reports of stockholdings and changes therein required under the provisions of Commission Regulations, Section 43.1.

the presentation of its case, it proposed to operate Station WGST through the means of a contractual arrangement with Lucas and Jenkins. This position was maintained until near the termination of the proceedings, when a letter was received from the Governor of Georgia, transmitting a letter from Lucas and Jenkins, withdrawing all offers theretofore made to purchase an interest in or to accept employment relative to WGST.

20. Following the withdrawal of Lucas and Jenkins, the applicant submitted as an exhibit a "Plan for Operation of Station WGST by the Georgia School of Technology." In this document, the applicant proposed to terminate its agreement with Southern Broadcasting Stations, Inc., and take over all equipment used in operation of the station. It declared that it would exercise full and complete con- [fol. 51] trol over the entire operation of the station, including full and complete supervision over all programs broadcast; that it would employ a manager on a salary basis; that the Radio Committee of the Board of Regents would be continued in existence to act as an advisory committee to the president of the Georgia School of Technology; that an adequate staff of employees would be engaged by the Georgia School of Technology; that provision would be made to enable engineering students with proper qualifications to assist operators so that the wishes of the donor of the station might be more fully carried out; and that monthly reports would be submitted to the Commission reporting in detail the steps taken to accomplish the proposed plan of operation until completion of all steps. It was conceded by applicant's representatives that details of the plan had not been worked out and that there was some uncertainty as to the ownership of the WGST equipment, although applicant was advised that it had a legal right to the same. It was further conceded that preparations necessary to put the plan in operation had not been worked out, that the plan was simply a statement of purpose which had been formulated and approved immediately before presentation.

Conclusions

1. The Communications Act of 1934, as amended, states that its purpose is to provide for the use of the channels of interstate and foreign radio transmission by persons for

limited periods of time under licenses granted by Federal authority, and that no person shall use or operate radio transmission apparatus except with a license granted under the provisions of the Act (Section 301). The Act prescribes that the Commission shall grant licenses only upon written application setting forth such facts as the Commission may require as to citizenship, character and financial, technical and other qualifications of the applicant (Section 308). The Commission is directed to grant any applicant a station license, subject to the limitations of the Act, if public convenience, interest, or necessity will be served thereby (Sections 307, 309). The station license, the frequencies authorized to be used by the licensee and the rights granted in the license may not be transferred, assigned, or in any manner disposed of to any person unless the Commission shall, after securing full information, decide that the transfer is in the public interest and shall consent thereto in writing (Section 310).

2. The Rules and Regulations prescribe that application for consent to assignment of license or to transfer control of a corporate license shall be filed at least 60 days in advance of the contemplated effective date of the assignment or transfer, the application to contain such information as the prescribed application form calls for (Section 1.364). The forms of application call for substantially the same information about assignees and transferees as the Commission requires with reference to applicants for new facilities.

3. The Act and the Commission's rules, including but not limited to the provisions cited immediately above, firmly establish the principles that the licensee is and must be responsible for the control and operation of the station, that before becoming a licensee he must show qualifications which satisfy the Commission that as a licensee he will discharge his duties and responsibilities in the public interest, and that the licensee may not transfer to any person his respon- [fol. 52] sibilities as licensee except with the Commission's written consent on written application therefor.

4. In this case, while the present operating agreement with Southern Broadcasting Stations, Inc. contains language purporting to give the licensee the right to control the operations of Station WGST, the actual duties and responsibilities of the licensee with respect to this station have been assumed

by Southern Broadcasting Stations, Inc. to the almost complete exclusion of the station licensee. The Georgia School of Technology as the licensee of WGST has failed to assume the responsibilities and to discharge the duties of the licensee of a radio broadcasting station as required by the Communications Act of 1934, as amended, and the Commission's Rules and Regulations. This failure to comply with the provisions of the Communications Act of 1934, as amended, and the Commission's Rules and Regulations, has been due in some measure to misunderstanding and lack of knowledge rather than to bad faith on the part of the licensee.

5. Under the present circumstances, the license cannot be renewed. However, no useful purpose would be served by refusing to renew the license under any and all conditions. Moreover, a continuation of the program service of Station WGST under proper management will serve the public interest, convenience and necessity.

6. The Commission will consider the issuance of a renewal of the license to Georgia School of Technology provided the Commission is given assurance that the applicant is prepared to and will in fact assume and discharge the full responsibilities of a licensee. Further application for renewal of license in accordance with these conclusions shall be filed with the Commission within sixty days from the date hereof, setting forth the plan of the Station for the acquisition of the necessary facilities and equipment, and for the business management, representation, and control of its future operations, together with a list of all persons to participate therein. In the meantime the Commission will permit the continued operation of Station WGST under temporary extension of license for a period of 90 days from this date.

Federal Communications Commission, T. J. Slowie, Secretary.

[Stamp:] Signed by above. Mailed by Mar. 25, 1943. Mail & Files. J. J. B.

Adopted March 23, 1943.

"Released: Mar. 25, 1943. See Section 1.231 of the Commission's Rules of Practice and Procedure."

CWW v.

[fol. 53] Docket No. 5903

Mailed to the Following: Georgia School of Technology (WGST), Attorney Ellis G. Arnall, John E. McClure, Louis G. Caldwell, Reed T. Rollo, Samuel Hewlett.

Southern Broadcasting Stations, Inc., Clarence H. Calhoun, President, George B. Porter.

[fol. 54] EXHIBIT "C" TO ANSWER

68131

Before the Federal Communications Commission
Washington, D. C.

B-170. Docket No. 5903. File No. B3-R-411

In re Application of GEORGIA SCHOOL OF TECHNOLOGY, (WGST), ATLANTA, GEORGIA, for Renewal of License

Order

The Commission having under consideration the proceedings upon the above-entitled application of Georgia School of Technology (WGST), Atlanta, Georgia, for renewal of license;

It Appearing, That Proposed Findings of Fact and Conclusions of The Commission in the proceedings upon the above-entitled application were made and entered on March 23, 1943, and that no exceptions have been filed thereto;

It is ordered, This 8th day of May, 1943, that the Proposed Findings of Fact and Conclusions of the Commission, heretofore made and entered, be, and they are hereby, made a part hereof by reference and adopted as the findings of fact and conclusions of the commission;

It is further ordered, That the above-entitled application of Georgia School of Technology Be, and it is hereby, denied without prejudice to the filing of a further application for renewal of license in accordance with the conclusions reached in these proceedings, such further application to be filed within 60 days from March 23, 1943, and to set forth the plan of the applicant for the acquisition of the necessary facilities and equipment, and for the business management, representation, and control of its future operations, together with a list of all persons to participate therein;

[fol. 55] It is further ordered, That the outstanding temporary license for the operation of Station WGST, Atlanta, Georgia, Be, and it is hereby, extended for a period of ninety (90) days from March 23, 1943, or until 3:00 a. m., E.S.T., June 21, 1943.

Federal Communications Commission, T. J. Slowie, Secretary.

CWWorthy—CWWb

[Stamp:] Signed by Above. Mailed by May 11, 1943. Mail & Files.

(7.49)

(a) Is applicant now, or has applicant been, party to a proceeding in any Federal court involving the monopolising of, or the attempt to monopolise, radio communication, directly or indirectly, through control of the manufacture or sale of radio apparatus, by exclusive traffic arrangements, or by any other means, or of using unfair methods of competition?

No.
(Answer yes or no)

(b) Is applicant directly or indirectly controlled by any person involved in such proceeding?

No.
(Answer yes or no)

9. (a) In what respect, if any, does the apparatus, antenna, or technical operation differ from that described in the last application for license or renewal of license?

Only in value of antenna resistance. Form 306 filed with FCC Sept. 1942 and approved by it.
(If none, so state)

(b) If any changes whatsoever have been made in the fundamental audio or radio circuit of th transmitter or in the coupling and phasing equipment affecting the schematic diagra heretofore filed with the Commission, the applicant represents that there is attached an accurate corrected diagram. None.
(If none, so state)

10 Specify actual minimum periods during the regular broadcast day (6 a.m. to 12 midnight, local standard time) the station has been operated since the effective date of existing license: [3]

	Before 6 p.m.	After 6 p.m.	Total Minimum Hours Daily
Sunday	7:45 A.M. to 6:00 P.M., 10¼ hr.	6:00 P.M. to Midnight, 6 hrs.	10¼ hrs.
Monday	6:00 A.M. to 6:00 P.M. 12 hrs.	〃 〃	6 hrs. 18 〃
Tuesday	〃 〃	〃 〃	〃
Wednesday	〃 〃	〃 〃	〃
Thursday	〃 〃	〃 〃	〃
Friday	〃 〃	〃 〃	〃
Saturday	〃 〃	〃 〃	〃

11. Under existing license —

(a) State average number of hours per month devoted to commercial programs 225.34

(b) State average number of hours per month used in advertising any business (other than broadcasting) in which applicant is engaged either directly or indirectly None

(c) State average number of hours per month devoted to chain programs, specifying the network

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(d) State the average percentage of time per month (combined total should equal 100 percent) devoted to—

	Commercial Programs		Sustaining Programs
1.	Entertainment	48.51 %	10.37
2.	Educational	1.05	4.63
3.	Religious	2.73	2.42
4.	Agricultural		.40
5.	Civic[4]		1.96
6.	Governmental[5]	1.23	.46
7.	News	6.18	7.35
8.			
9.	Total	59.40	40.6

2. (a) Are phonograph records used? _____ If so, state average number of hours per month 32.67

(b) Are any other mechanical records (electrical transcriptions, etc.) used? Yes If so, state average number of hours per month 86.33

13.[6] (a) Set forth fully any respects in which the character of the program service proposed is different from that carried on under the existing license as reflected in your answer to section 11. The only changes contemplated in the character of program service involves greater emphasis on programs originating at Georgia School of Technology, utilizing the school's faculty, students and facilities. Applicant intends to devote more time to Georgia Tech programs than formerly. Radio Engineering students of Ga. Tech, properly qualified, will be required to serve as operating personnel of the station.
(If none, so state)

(b) Attach copies of all contracts or give the substance of all understandings of a general nature affecting program service, including (1) chain broadcast contracts, (2) transcription service contracts, (3) bulk time sales contracts, and (4) contracts or understandings which confer upon persons other than the licensee (or employees thereof entirely under the direction of the licensee) any power or authority with respect to the selection or production of programs or the sale of time, even though ultimate determination with respect to such matters is retained by the licensee. See "Exhibit 3" attached.

14.[6] Set forth in an exhibit the name, address, citizenship and experience of each employee of the station having any responsibilities in connection with the technical operation or with programs, showing the position and duties of each. See "Exhibit 3" attached.

1553H-3

4

applicant's last application for station license is to be considered as part of this application and the truth of the statements therein contained is hereby reaffirmed, except insofar as the contrary expressly appears herein, and in the following particulars. _____

Since the issuance on March 25, 1943 of the Proposed Findings of Fact and Conclusions of the Commission on Applicant's Renewal Application (File No. BS-R-411, Docket No. 5903), applicant has purchased all of the outstanding shares of Southern Broadcasting Stations, Inc. Exhibit 4, attached, contains a certified copy of the minutes of April 23, 1943 of Board of Regents of the University System of Georgia authorizing the execution of the contract, in pursuance of which said shares have since been fully acquired and naming its Committee appointed to act for the Board, when the Board itself is not in session, to supervise, direct, and control the operation of Station WSB in behalf of applicant.

By M. L. Brittain
President -
Official.

(Be sure all necessary information is furnished and all questions are fully answered. If any portions of the application are not applicable, specifically so state, and show reasons therefo Defective applications may be returned without consideration.—section 1.72, Rules of Practice and Procedure.)

STATE OF Georgia
COUNTY OF Fulton } ss:

M. L. Brittain, being first duly (sworn upon his oath, (affirmed according to law deposes and says that he is the President
(If applicant is not an individual, state relation of affiant to applicant)
above-named applicant, and that the facts stated in the foregoing application, and all exhibits attached thereto, are true of his own knowledge, except as to such statements as are therein stated on information and belief, and as to such statements he believes them to be true.

M. L. Brittain

session, to supervise, direct, and control the operation of Station WSB in behalf of applicant.

By M. L. Brittain
President -
Official.

(Be sure all necessary information is furnished and all questions are fully answered. If any portions of the application are not applicable, specifically so state, and show reasons therefo Defective applications may be returned without consideration.—section 1.72, Rules of Practice and Procedure.)

STATE OF Georgia
COUNTY OF Fulton } ss:

M. L. Brittain, being first duly (sworn upon his oath, (affirmed according to law deposes and says that he is the President
(If applicant is not an individual, state relation of affiant to applicant)
above-named applicant, and that the facts stated in the foregoing application, and all exhibits attached thereto, are true of his own knowledge, except as to such statements as are therein stated on information and belief, and as to such statements he believes them to be true.

M. L. Brittain
Affiant

Subscribed and sworn to before me this 20 day of May, 1943

Harriet Henderson
Notary public

(SEAL)

(Notary public's seal must be affixed where law of jurisdiction requires, otherwise state that law does not require seal.)

My commission expires _____, 19__.

Notary Public, Fulton County, Georgia
My Commission Expires Feb. 11, 1945

[7] Must be subscribed and verified by party applicant, by one of the parties if more than one, by an officer if applicant is a corporation, or by attorney of applicant only under the provisions of section 1.135 which must be fully explained.

4

(P.52)

...ant's last application for station license is to be considered as part of this application and the truth of the statements therein contained is hereby reaffirmed, except insofar as the contrary expressly appears herein, and in the following particulars. _____

---

16. Applicant waives any claim to the use of any particular frequency, or of the ether, as against the regulatory power of the United States, because of the previous use of the same, whether by license or otherwise, and requests a renewal of its existing license in accordance with this application.

Dated this 20 day of May, 1943

(Must correspond with item 1) Applicant.

GEORGIA SCHOOL OF TECHNOLOGY

By M. L. Brittain

President

Official.

(Be sure all necessary information is furnished and all questions are fully answered. If any portions of the application are not applicable, specifically so state, and show reasons therefo Defective applications may be returned without consideration.—section 1.72, Rules of Practice and Procedure.)

STATE OF Georgia
COUNTY OF Fulton } ss:

M. L. Brittain, being first duly (sworn upon his oath, (affirmed according to law) deposes and says that he is the President

(If applicant is not an individual, state relation of affiant to applicant)

above-named applicant, and that the facts stated in the foregoing application, and all exhibits attached thereto, are true of his own knowledge, except as to such statements as are therein stated on information and belief, and as to such statements he believes them to be true.

M. L. Brittain.

Affiant

Subscribed and sworn to before me this 20 day of May, 1943

(SEAL)

Harriet Henderson

Notary public

[fol. 61] EXHIBIT "E" TO ANSWER

7110A

Federal Communications Commission

Washington 25, D. C.

Docket No. 6534

File No. B3-R-441

NOTICE

In Re Application of: Georgia School of Technology, (WGST).

Date Filed: May 23, 1943.

For: Renewal of License (Main and Auxiliary).

Class of Service: Broadcast.

Class of Station: Broadcast.

Location: Atlanta, Georgia.

Operating Assignment Specified: Frequency, 920 kc; Power, 1 kw night, 5 kw day; Hours of Operation, Unlimited.

You are hereby notified that the commission has examined the above-described application and has designated the matter for hearing for the following reasons:

1. To determine whether the terms, provisions and conditions of the Commission's Proposed Findings of Fact and Conclusions of March 23, 1943, and Order of May 8, 1943, in Docket 5903 are effectuated by the provisions and consummation of the contract entered into between The Regents of the University System of Georgia, on behalf of the licensee, Georgia School of Technology, and the Southern Broadcasting Stations, Inc. of April 15, 1943.

2. To determine the extent to which the former officers, directors, stockholders and employees of Southern Broadcasting Stations, Inc., will participate in the revenues of the station under the contract of April 15, 1943, as heretofore described, and the effect which this participation will have on the overall finances and operation of the station.

3. To determine the consideration given by the former officers, directors, stockholders and employees of Southern

Broadcasting Stations, Inc., in return for the share in the earnings of the station which they will receive under the contract of April 15, 1943, as heretofore described.

4. To determine the value of the equipment owned by, and the assets of, the Southern Broadcasting Stations, Inc. at the time the contract of April 15, 1943, heretofore referred to, was consummated.

5. To determine the degree of influence, control and domination, whether direct or indirect, that the former officers, stockholders, directors and employees of the Southern Broadcasting Stations, Inc. will have on the future operations of WGST.

6. To determine the amount and degree of participation, control and influence The Regents of the University System of Georgia's WGST Radio Committee, and each of its members, will exercise in the operation of the station.

[fol. 62] 7. To determine whether there are any other written or oral contracts, understandings or agreements between the former stockholders, officers, directors or employees of the Southern Broadcasting Stations, Inc. and The Regents of the University System of Georgia, the WGST Radio Committee, or any of their members, in connection with the operation of WGST, or the contract of April 15, 1943, heretofore referred to, which have not been disclosed to the Commission.

8. To determine whether in the light of the Commission's Proposed Findings of Fact and Conclusions and Order in Docket 5903 and the present and future relationship between the Regents of the University System of Georgia, the WGST Radio Committee, the licensee, Georgia School of Technology, and the Southern Broadcasting Stations, Inc., their present and past officers, directors, stockholders and employees, the granting of this application and the continued operations of WGST will serve public interest, convenience and necessity.

The application involved herein will not be granted by the Commission unless the issues listed above are determined in favor of the applicant on the basis of a record duly and properly made by means of a formal hearing.

The applicant is hereby given the opportunity to obtain a hearing on such issues by filing a written appearance in

accordance with the provisions of Section 1.382(b) of the Commission's Rules of Practice and Procedure. Persons other than the applicant who desire to be heard must file a petition to intervene in accordance with the provisions of Section 1.102 of the Commission's Rules of Practice and Procedure.

The applicant's address is as follows: Georgia School of Technology, Radio Station WGST, North Avenue & Cherry Street, Atlanta, Georgia.

Dated at Washington, D. C. Oct. 12, 1943.

By the Commission,

T. J. Slowie, Secretary.

Copies sent to the following: Applicant, John E. McClure, Southern Bldg., Louis G. Caldwell, and Reed T. Rollo, National Press Bldg., Southern Broadcasting Stations, Inc., Att: Clarence H. Calhoun, President, 710 Rhodes Haverty Building, Atlanta, Georgia, George B. Porter, Sam E. Hewlett, Wm. Oliver Building, Atlanta, Georgia, Ellis G. Arnall, Governor, State of Georgia, Atlanta, Georgia.

[fol. 63] [Stamp:] Federal Communications Commission, Nov. 4, 1943. Office of Secretary.

EXHIBIT "F" TO ANSWER

Federal Communications Commission, Washington 25, D. C.

Docket No. 6534

File No. B3-R-411

In Re Application of: Georgia School of Technology, (WGST).

Date Filed: May 22, 1943.

For: Renewal of License (Main and Auxiliary).

Class of Service: Broadcast.

Class of Station: Broadcast.

Location: Atlanta, Georgia.

Operating Assignment Specified: Frequency, 920 kc.; Power, 1 kw night, 5 kw day; Hours of Operation, Unlimited.

Rules and Regulations, and the Standards of Good Engineering Practice Concerning Standard Broadcast Stations.

To the Federal Communications Commission:

1. Name of applicant[1] Georgia School of Technology

2. Post-office address: Street and number North Avenue at Cherry Street

   City Atlanta State Georgia

3. Is applicant a citizen of the United States? Yes

4. Is the applicant a representative of an alien or foreign government? No

5. Give the file number and date of the license sought to be renewed BR-Z-1441 - Dec. 20, 1948.

6. Operation authorized by the existing license and for which renewal of license is requested:

   (a) Frequency 920 kilocycles.

   (b) Power: (1) Night 1000 watts. (2) Day 5000 watts.

   (c) Hours of operation Unlimited

   (Should be stated exactly as in existing license. Time-sharing stations, limited time stations, and stations rebroadcasting programs of others shall file documents as specified by sections 3.74, 3.80 and 3.408, subsection (b), footnote 3, Rules of Practice and Procedure, respectively.)

7. (a) Do the reports filed by applicant under sec. 1.361 of the Rules of Practice and Procedure reflect substantially applicant's status with regard to all conditions stated in such reports as of the date this application was executed?[2] Yes. See Exhibit 1 attached
   (Answer yes or no)

   (b) If not, submit a separate statement herewith showing changes.

   (c) Has applicant filed the report and the necessary supplemental reports required by sec. 43.1 of the Rules? Yes. Copy of latest report attached, marked "Exhibit 2"
   (Answer yes or no)

---

[1] Name of applicant must be identical with that shown in current license.

[2] Action upon this application will be held in abeyance, pending the filing of such reports, if delinquent.

rnat described in the last application for license or renewal of license?

Only in value of antenna resistance. Form 306 filed with FCC Sept. 1942 and approved by it.
(If none, so state)

(b) If any changes whatsoever have been made in the fundamental audio or radio circuit of th transmitter or in the coupling and phasing equipment affecting the schematic diagram heretofore filed with the Commission, the applicant represents that there is attached an accurate corrected diagram. None.
(If none, so state)

10 Specify actual minimum periods during the regular broadcast day (6 a.m. to 12 midnight, local standard time) the station has been operated since the effective date of existing license:[3]

	Before 6 p.m.		After 6 p.m.		Total Minimum Hours Daily
Sunday	7:45 A.M. to	6:00 P.M., 10¼ hr.	6:00 P.M. to	Midnight, 6 hrs.	16¼ hrs.
Monday	6:00 A.M. to	6:00 P.M., 12 hrs.	"	"	6 hrs. 18 "
Tuesday	"	"	"	"	"
Wednesday	"	"	"	"	"
Thursday	"	"	"	"	"
Friday	"	"	"	"	"
Saturday	"	"	"	"	"

11. Under existing license

(a) State average number of hours per month devoted to commercial programs 225.34

(b) State average number of hours per month used in advertising any business (other than broadcasting) in which applicant is engaged either directly or indirectly None

(c) State average number of hours per month devoted to chain programs, specifying the network organization furnishing same:

Commercial Programs	Sustaining Programs
181 hrs. Columbia Broadcasting System	126.67 Columbia Broadcasting System

[3] If minimum hours operated each day are not in compliance with sec. 3.71 of the Rules, attach hereto a statement of explanation.

2

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7. News	[illegible]	7. News	[illegible]
8.		8.	
9. Total	59.40	9. Total	40.6

2. (a) Are phonograph records used? _____ If so, state average number of hours per month 32.67

(b) Are any other mechanical records (electrical transcriptions, etc.) used? Yes If so, state average number of hours per month 26.33

13.[6] (a) Set forth fully any respects in which the character of the program service proposed is different from that carried on under the existing license as reflected in your answer to section 11. The only changes contemplated in the character of program service involves greater emphasis on programs originating at Georgia School of Technology, utilizing the school's faculty, students and facilities. Applicant intends to devote more time to Georgia Tech programs than formerly. Radio Engineering students of Ga. Tech, properly qualified, will be required to serve as part-time Assistant Operators.
(If none, so state)

(b) Attach copies of all contracts or give the substance of all understandings of a general nature affecting program service, including (1) chain broadcast contracts, (2) transcription service contracts, (3) bulk time sales contracts, and (4) contracts or understandings which confer upon persons other than the licensee (or employees thereof entirely under the direction of the licensee) any power or authority with respect to the selection or production of programs or the sale of time, even though ultimate determination with respect to such matters is retained by the licensee. See "Exhibit 2" attached.

14.[6] Set forth in an exhibit the name, address, citizenship and experience of each employee of the station having any responsibilities in connection with the technical operation or with programs, showing the position and duties of each. See "Exhibit 3" attached.

---

[4] Include in this item fraternal, chamber of commerce, charitable, and other civic but nongovernmental programs.

[5] Include in this item all municipal, state, and federal programs, including political or controversial broadcasts by public officials, or candidates for public office, and regardless of whether or not the programs included under this item are entertainment, educational, agricultural, etc., in character.

[6] Any document already on file with the Commission may be incorporated as part of this application by reference if accompanied by a statement that there has been no change therein since the date of filing, and provided that the reference is sufficiently complete by date of filing, file number and application in connection with which filed, to permit identification.

Dated this 20 day of May, 1943

(Must correspond with Item 1) Applicant.
HE GEORGIA SCHOOL OF TECHNC [illegible]
By M. L. Brittain
President
Official.

(Be sure all necessary information is furnished and all questions are fully answered. If any portions of the application are not applicable, specifically so state, and show reasons therefo Defective applications may be returned without consideration.—section 1.72, Rules of Practice and Procedure.)

STATE OF Georgia
COUNTY OF Fulton } ss:

M. L. Brittain, being first duly (sworn upon his oath, (affirmed according to law deposes and says that he is the President
(If applicant is not an individual, state relation of affiant to applicant)
above-named applicant, and that the facts stated in the foregoing application, and all exhibits attached thereto, are true of his own knowledge, except as to such statements as are therein stated on information and belief, and as to such statements he believes them to be true.

M. L. Brittain.
Affiant

Subscribed and sworn to before me this 20 day of May, 1943

Harriet Henderson
Notary public

(SEAL)

(Notary public's seal must be affixed where law of jurisdiction requires, otherwise state that law does not require seal.)

My commission expires _____, 19__.

Notary Public, Fulton County, Georgia.
My Commission Expires Feb. 11, 1945

9 Must be subscribed and verified by party applicant, by one of the parties if more than one, by an officer if applicant is a corporation, or by attorney of applicant only under the provisions of section 1.121 which must be fully explained.

PETITION FOR GRANT OF APPLICATIONS WITHOUT A HEARING

Comes now the Georgia School of Technology, licensee of broadcast station WGST of Atlanta, Georgia, and the applicant in the above entitled cause, petitioning the Commission as follows:

To set aside its action of October 12, 1943, designating the above described applications for hearing, and to grant said applications without hearing.

In support of the foregoing, petitioner states as follows:

A. Preliminary Statement

1. Your Commission on May 8, 1943 passed an order denying said applications "without prejudice to the filing of a further application for renewal of license in accordance with the conclusions reached in these proceedings, such further application . . . . to set forth the plan of the applicant for the acquisition of the necessary facilities and equipment, and for the business management, representation, and control of its future operations, together with a list of all persons to participate therein."

2. Applicant, availing itself of this privilege, filed its application for renewal on May 22, 1943 and amended same from time to time thereafter in order to apprise the Commission currently with all steps taken to secure full control over the management and direction of radio station WGST.

3. As of October 12, 1943, the date of the Commission's last Order, the record in substance presented the following case:

[fol. 64] (a) Applicant is a state-supported institution of higher learning and a constituent part of the University System of Georgia. All institutions within the University System are under the direction and management of a Board of Regents which by statute is an instrumentality and department of the government of the State of Georgia. The "Regents of the University System of Georgia" is the name of a public corporation authorized to acquire and hold property in trust for the respective institutions subject to the management and direction of said Board. The Board of Regents is also the governing body of this public corporation.

(b) In pursuance of the conclusions of the Federal Communications Commission, the Regents of the University

System of Georgia, in its corporate capacity, undertook to acquire for and on behalf of applicant, Georgia School of Technology, all physical assets belonging to Southern Broadcasting Stations, Inc., necessary for and incidental to the operation of said broadcast station. These negotiations resulted in the consummation of a contract between the then stockholders of Southern Broadcasting Stations, Inc. and said Regents. Copies of the contract are of file with the Commission. The Nine Thousand Eight Hundred and Twenty-Four (9,824) Shares referred to in this contract were delivered to the Regents by the stockholders on or about May 22, 1943. These shares constituted all of the outstanding stock of Southern Broadcasting Stations, Inc. Applicant thus acquired control over radio station WGST.

(c) This control was exercised on June 7, 1943 by the election of a new Board of Directors, representing applicant. The new Board accepted the resignations of all former officers of Southern Broadcasting Stations, Inc. and, in turn, elected its own official personnel. Action was immediately taken by the new Board to liquidate Southern Broadcasting Stations, Inc. and to surrender its charter.

(d) The liquidation was effected by transferring the assets of the corporation to Regents of the University System of Georgia, which accepted the transfer in trust for the exclusive use and benefit of applicant. The physical assets so transferred are set forth and contained in Exhibit "A" of the contract effective April 15, 1943. The remain-[fol. 65] ing assets which were transferred consisted of specific items mentioned in the transfer itself (a copy of which is of record) as well as cash and receivables accruing from the operation of the station since April 14, 1943. The financial condition of the corporation as of April 15 appears of the record. No debt of Southern Broadcasting Stations. Inc. which accrued prior to April 15, 1943, was assumed by applicant.

(e) The Superior Court of Fulton County accepted the surrender of the charter of Southern Broadcasting Stations, Inc. on or about July 9, 1943 after a showing satisfactory to the Court, that the corporation's liabilities and assets had been properly disposed of and that the surrender of its charter would be without prejudice to the rights of any stockholder or creditor.

(f) Since July 9, 1943, Applicant has managed, directed and controlled the affairs of radio station WGST through a Committee appointed by its governing board, viz., the said Regents. This Committee consists of Dr. M. L. Brittain, President of Georgia Tech; Dr. S. V. Sanford, Chancellor of the University System of Georgia, and the following Regents: Frank M. Spratlin, alumnus of Georgia Tech, Chairman; Sandy Beaver; William S. Morris; Pope F. Brock and Marion Smith.

(g) The record contains an amendment to the effect that no former officer, director, or stockholder was then employed or would thereafter be employed by applicant. The only persons within this category who at any time had been retained by applicant prior to said amendment were Clarence H. Calhoun and Mrs. Paula J. Wilhite. Applicant terminated Mr. Calhoun's connection June 21, and Mrs. Wilhite's, June 23, 1943.

(h) The contract between the Regents and the former stockholders of Southern Broadcasting Stations, Inc. provides that the latter are to receive in payment for their shares of stock an amount equivalent to fifteen (15) percent of the collections of the station's net billings for a period beginning April 15, 1943 and ending January 6, 1950.

[fol. 66] B. Reasons for Grant of Application Without Hearing

1. All assets received by applicant or by the Regents on its behalf are fully disclosed in the contract effective as of April 15, 1943. Except as provided therein, no agreement or understanding exists, collaterally or otherwise, with respect to any obligation to or consideration in favor of any former officer, director, or stockholder of the former Southern Broadcasting Stations, Inc., personally or officially, directly or through indirection. This statement is made without reservation or equivocation. No hearing or investigation could possibly disclose anything remotely to the contrary.

2. No benefit or right is given to or reserved by any former officer, director, or stockholder of Southern Broadcasting Stations, Inc. under said contract, except the provision for the payment to former stockholders for their shares of stock which they transferred to the regents of

the University System of Georgia, in trust, for the exclusive use and benefit of applicant.

3. No hearing or investigation could disclose any consideration flowing to any former officer, director, stockholder, or employee of Southern Broadcasting Stations, Inc., not covered by said contract. The extent of the payment, over the period specified in the contract, could now be subject merely to speculation and is beyond the possibility of determination.

4. It may be possible to ascertain the value of the equipment and assets which were transferred by Southern Broadcasting Stations, Inc. to the Regents but such an appraisal would have little, if any, meaning because of the difficulty which applicant would have encountered in acquiring said equipment from any other source under wartime conditions.

5. With all deference to the Commission, applicant contends that the Regents, in consummating the contract of April 15 were exercising a discretion beyond the scope of the Commission's inquiry, unless it appear that the obligations assumed by the Regents are so onerous as to embarrass applicant in effectively discharging its obligation as a licensee of the Commission.

6. Paragraph 6 of the contract, effective April 15, 1943, reads as follows:

> "The first party agrees that it will in good faith undertake to have the Georgia School of Technology [fol. 67] operate Station WGST in an efficient and satisfactory manner to the end that said Broadcasting Station may continue to earn and receive as large net billings as may be possible, having in view general business conditions and other factors which enter into and affect the results of such operations."

The Propriety of this covenant, as applicant is informed, has been challenged on the ground that it tends to obligate licensee to operate said station in the interest of former stockholders of Southern Broadcasting Stations, Inc., rather than in the public interest, as required by law. Since the parties never presumed that such a construction would be placed on the contract and since they entertained no intent to that effect, the contract has been amended by strik-

ing this covenant therefrom, the contract in other particulars remaining as appears of record in this case. Copies of the amendment are herewith shown as Exhibit "A" hereof.

7. No hearing could disclose any degree of influence, control or domination, directly or indirectly, which the former officers, stockholders, directors and employees of Southern Broadcasting Stations, Inc., could have on the future operations of WGST.

8. The Board of Regents is by statute the governing body of the Georgia School of Technology. The Commission surely would not indulge the presumption that the Board would in the slightest degree be remiss in its public duty. No hearing or investigation could disclose anything except the most meticulous attention to the affairs of applicant on the part of its Board. The Board has specifically designated the Committee, named above, of which Frank M. Spratlin is Chairman, to manage, control and direct the operations of radio station WGST and its acts in that behalf are in law and in fact the acts of applicant.

9. Applicant calls the Commission's attention to facts which demonstrate:

(a) That the Board of Regents and its Committee have given the utmost diligence to the proper operation of radio station WGST;

(b) That the payment of fifteen (15) percent of collections on net billings to the former stockholders of Southern Broadcasting Stations, Inc., could not possibly embarrass applicant in fulfilling its public responsibilities as licensee of the Commission.

[fol 68] The books of account reflecting the operations of radio station WGST, subsequent to the transfer of the station by Southern Broadcasting Stations, Inc., to the Regents in trust for the applicant, were opened June 14, 1943. Beginning with July 1 a full quarter has elapsed on the basis of which a comparison is possible between the results obtained by the former management and results secured by applicant on its own behalf.

In parallel columns a summary is presented covering operations for the quarter beginning July 1, 1942 as com-

pared with the quarter beginning July 1, 1943. This comparison is made on exactly the same basis—before taxes, State or Federal, income or ad valorem, but after giving effect to the payment of that portion of the deferred purchase price accruing to former stockholders for their respective shares of stock.

	Southern Broadcasting Stations, Inc.		Georgia Tech	
Quarter Ending		Sept. 30, 1942		Sept. 30, 1943
Income:				
Sales		$82,121.21		$97,427.08
Less Commissions, Allowances and Discounts		5,099.08		6,822.71
Net Sales		$77,022.13		$90,604.37
Expenses:				
Administrative & General	$ 7,709.78		$ 5,781.55	
Engineering	9,573.80		9,815.29	
Studio	10,813.59		11,962.51	
Selling	15,274.91		4,244.96	
15% Purchase Money	.....		13,590.61	
		43,372.08		45,394.92
Net Profit		$33,650.05		$45,209.45

This comparison shows an improvement of Eleven Thousand Five Hundred and Fifty-Nine and 40/100 Dollars ($11,559.40).

Taking these earnings as a guide, the net fo. the year ending June 30, 1944 should reach One Hundred Eighty Thousand Eight Hundred and Thirty-Seven Dollars ($180,837.00) before taxes but after giving full effect to the payment of the deferred purchase money accruing during that period. Southern Broadcasting Stations, Inc., in its best year, 1941, before any deduction for taxes, experienced a net operating income which fell short of that figure by Forty-Eight Thousand Dollars ($48,000.00).

[fol. 69] Another factor has entered the situation of which the Commission hitherto has not been informed. The Commissioner of Internal Revenue, under date of August 31, 1943, advised the Regents with respect to "net earnings accruing from the operations of radio station WGST, the title to which stands in the name of the Regents of the University System for the benefit and exclusive use of the Georgia School of Technology; inasmuch as you are a department or instrumentality of the State of Georgia, you

are exempt from federal income tax and are not required to file returns of income." Furthermore, under the laws of Georgia, the assets of radio station WGST are now exempt from property taxes which otherwise would be imposed by the City of Atlanta, County of Fulton, and the State of Georgia. The Commission must of necessity instantly recognize that the burden of meeting the remainder of the purchase money payable to the former stockholders is insignificant in comparison with the tax burdens of which applicant is entirely relieved.

10. The Board of Regents, as the governing body of the Georgia School of Technology, the applicant herein, has with dispatch

(a) acquired control of radio station WGST for the exclusive use and benefit of applicant;

(b) severed all connections between said station and all former officers, directors and stockholders of Southern Broadcasting Stations, Inc.;

(c) placed the management of the station in competent hands and is exercising supervision over the station and its affairs in order that, as licensee of the Commission, it will fully discharge its public responsibilities.

The Board of Regents has every intention of maintaining the station as an effective instrumentality in the field of public broadcasting and is determined that the facilities of WGST will, with the aid of the Commission, be constantly improved. The income of the station is being marshalled to the end that its programs and mechanical efficiency will keep abreast of the best traditions and highest ideals of this industry.

No public hearing or investigation could disclose any circumstance inconsistent with or other than as fully supporting the representations herein made.

[fol. 70] 11. Finally, applicant believes that the Commission should accord due weight to the fact that applicant is a public institution, under the direction of a Board, which itself is a department of a sovereign State of this Union and entitled to full faith and credit, especially in the absence of any circumstance to impugn its ability or character. And

applicant respectfully submits that upon the record the Commission, without further hearing, is overwhelmingly justified is holding that the renewal of the pending application is in accord with public interest, convenience and necessity.

Wherefore, the premises considered, petitioner respectfully requests the Commission to set aside its action of October 12, 1943, designating for hearing petitioner's applications and to grant same without further hearing.

Respectfully submitted, Georgia School of Technology. By Louis G. Caldwell, 914 National Press Building, Washington 25, D. C.; Reed T. Rollo, 914 National Press Building, Washington 25, D. C.; John E. McClure, Southern Building, Washington, D. C.

Of Counsel: Philip Weltner, 1209 First National Bank Building, Atlanta, Ga.; T. Grady Head, Attorney General for the State of Georgia.

[fol. 71] EXHIBIT "G" TO ANSWER

72101

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington 25, D. C.

File No. B3-R-441

Docket No. 6534

In Re Application of GEORGIA SCHOOL OF TECHNOLOGY (WGST), ATLANTA, GEORGIA, for Renewal of License

ORDER

At a session of the Federal Communications Commission held in its offices in Washington, D. C., on the 23rd day of November, 1943;

The Commission having under consideration a petition requesting a grant without hearing of the application for the

renewal of license of Georgia School of Technology (WGST), Atlanta, Georgia, File No. B3-R-441, Docket No. 6534;

It is ordered, This 23rd day of November, 1943, that the aforementioned petition to reconsider and grant without hearing of the petitioner's application for renewal of license be, and it is hereby, denied.

Federal Communications Commission, T. J. Slowie, Secretary.

[fol. 72] EXHIBIT "H" TO ANSWER

85035

Before the Federal Communications Commission, Washington, D. C.

B-221

Docket No. 6534

File No. B3-R-411

In re Application of GEORGIA SCHOOL OF TECHNOLOGY (WGST), ATLANTA, GEORGIA, for Renewal of License

APPEARANCES:

Louis G. Caldwell, Reed T. Rollo, John E. McClure, and Phillip Weltner on behalf of applicant; Marcus Cohn on behalf of the Commission.

PROPOSED DECISION

Preliminary Statement

1. This is a proceeding upon an application filed May 22, 1943, by the Georgia School of Technology for renewal of license for the operation of broadcast station WGST, Atlanta, Georgia.

2. A prior application by the Georgia School of Technology for renewal of license for station WGST was denied by the Commission on May 8, 1943 following the proceedings in Docket 5903. Such denial was based upon findings and conclusions by the Commission that by virtue of an agreement in effect at the time of such proceedings, control of

station WGST had been illegally transferred to Southern Broadcasting Stations, Inc., and the Georgia School of Technology had failed to assume the responsibilities and discharge the duties of a licensee of a broadcast station as required by the Communications Act of 1934, as amended, and the Commission's Rules and Regulations.* However, the Commission further concluded that the licensee's failure to comply with the Act and the Commission's Rules had been due in some measure to misunderstanding and lack of knowledge rather than to bad faith. The Commission stated that it would consider the issuance of a renewal of license to the Georgia School of Technology provided assurances were given that applicant was prepared to and would in fact assume and discharge the full responsibilities of a licensee. [fol. 73] Accordingly, the Georgia School of Technology was given the opportunity of filing within 60 days a further application for renewal of license in accordance with the Commission's conclusions, setting forth the plan of the School for the acquisition of the necessary facilities and equipment, and for the business management, representation, and control of the future operations of WGST, together with a list of all persons to participate therein. Pending determination of the instant proceedings, operation of WGST has continued under temporary extensions of license to the Georgia School of Technology.

3. The instant application was filed on May 22, 1943 pursuant to the opportunity afforded in the Commission's decision in Docket 5903. On October 12, 1943, the Commission designated the application, as amended, for hearing upon the following issues:

> a. To determine whether the terms, provisions and conditions of the Commission's Proposed Findings of Fact and Conclusions of March 23, 1943, and Order of May 8, 1943, in Docket 5903 are effectuated by the provisions and consummation of the contract entered into between The Regents of the University System of

---

* The details of such agreement and the operations thereunder are set forth in the Commission's Findings of Fact and Conclusions of Law in Docket 5903 (10 F.C.C. —) which are incorporated herein by reference. This agreement (hereinafter referred to as the 1936 agreement) was to run until January 6, 1950.

Georgia, on behalf of the licensee, Georgia School of Technology, and the Southern Broadcasting Stations, Inc. of April 15, 1943.

b. To determine the extent to which the former officers, directors, stockholders and employees of Southern Broadcasting Stations, Inc., will participate in the revenues of the station under the contract of April 15, 1943, as heretofore described, and the effect which this participation will have on the over-all finances and operation of the station.

c. To determine the consideration given by the former officers, directors, stockholders and employees of Southern Broadcasting Stations, Inc., in return for the share in the earnings of the station which they will receive under the contract of April 15, 1943, as heretofore described.

d. To determine the value of the equipment owned by, and the assets of, the Southern Broadcasting Stations, Inc. at the time the contract of April 15, 1943, heretofore referred to, was consummated.

e. To determine the degree of influence, control and domination, whether direct or indirect, that the former officers, stockholders, directors and employees of the Southern Broadcasting Stations, Inc. will have on the future operations of WGST.

f. To determine the amount and degree of participation, control and influence The Regents of the University System of Georgia's WGST Radio Committee, and each of its members, will exercise in the operation of the station.

[fol. 74] g. To determine whether there are any other written or oral contracts, understandings or agreements between the former stockholders, officers, directors or employees of the Southern Broadcasting Stations, Inc. and The Regents of the University System of Georgia, the WGST Radio Committee, or any of their members, in connection with the operation of WGST, or the contract of April 15, 1943, heretofore referred to, which have not been disclosed to the Commission.

h. To determine whether in the light of the Commission's Proposed Findings of Fact and Conclusions and

Order in Docket 5903 and the present and future relationship between The Regents of the University System of Georgia, the WGST Radio Committee, the licensee, Georgia School of Technology, and the Southern Broadcasting Stations, Inc., their present and past officers, directors, stockholders and employees, the granting of this application and the continued operations of WGST will serve public interest, convenience and necessity.

Findings of Fact

4. The applicant is the Georgia School of Technology, a unit of the University System of the State of Georgia, governed by The Regents of the University System of Georgia. The Board of Regents is made up of 16 members, 15 of whom are appointed by the Governor of Georgia subject to confirmation by the State Senate. The Governor is the 16th Regent. Fourteen of the Regents are appointed for terms of 6 years, arranged so that they do not run concurrently. The remaining appointee serves at the will of the Governor.

5. In 1943 the Board of Regents appointed a committee, designated The WGST Committee, to manage, direct and control the affairs of the radio station. The committee consists of: Regents Frank M. Spratlin (Chairman), Sandy Beaver, William S. Morris, Pope F. Brock, Marion Smith, M. L. Brittain and S. V. Sanford. Under agreement with the stockholders of Southern Broadcasting Stations, Inc. entered into on April 15, 1943, and later amended, the Regents of the University System of Georgia, acting through the WGST Committee, acquired all of the stock of Southern Broadcasting Stations, Inc., and liquidated said corporation. It appears that, by these arrangements, the influence and control of the former stockholders, officers, directors, and employees of Southern Broadcasting Stations, Inc., has been removed from the operations of WGST. However, the purchase of the stock of Southern Broadcasting Stations, Inc. sets forth the consideration of 15% of WGST's net billings (the station's gross income) from the sale of time for any and all types of broadcasting, visual or sound, including any and all revenues which may be derived from such sources as a result of any new developments in the broadcasting field during the period in which payments are to be made. Payments under the contract are to be made

for the period from April 15, 1943 to January 6, 1950, the latter date being the same date as the termination date of the 1936 agreement.

[fol. 75] 6. Calculated upon the net billings of WGST for 1942, the applicant would pay to Southern Broadcasting Stations, Inc.'s stockholders, under the contract of April 15, 1943, approximately $333,000 for their stock. On the basis of WGST's operations for July, August and September of 1943, the payments to the former stockholders will total approximately $366,000. In 1942 15% of the station's net billings would have been approximately $50,000 and the station's total net income before taxes was only $71,293. Thus, on this basis the former stockholders of Southern Broadcasting Stations, Inc. would in 1942 have received payments exceeding 70% of the station's net income before taxes for that year. These payments are allegedly for the purchase of stock in a corporation the net worth of which had not been determined, Southern Broadcasting Stations, Inc.'s only assets at the time of the purchase of the stock being its contracts and the equipment of WGST, ownership of which has been questioned. Such contracts were based upon the corporation's former relationship with WGST under the 1936 agreement and do not appear to have any real asset value in the absence of such a relationship. The value of the equipment is estimated to be $50,000.

7. A member of the WGST Committee of the Board of Regents testified that the value of the assets of Southern Broadcasting Stations, Inc. was not taken into consideration in arriving at the amount to be paid for the stock of the corporation. He testified that the members of the Committee active in the negotiations wanted to be liberal with the stock vendors and retain their good will so that the former stockholders would cooperate in maintaining WGST's past associations and would not transfer their interests, such as the network contract, to other stations. Accordingly, after "horsetrading", the 15% figure of net billings was reached. Further testimony clearly indicated that no effort was made to get equipment elsewhere nor was any effort made to ascertain whether the former stockholders could carry over their network contract after being divorced from the operations of WGST. In addition, there is testimony indicating that the WGST Committee operated

on the basis that they desired to reward the former stockholders for the commercial success they made of operating the station.

Conclusions

1. Although the influence and control of the interests identified with Southern Broadcasting Stations, Inc. appear to have been removed from the operations of Station WGST, the arrangements entered into under the agreement of April 15, 1943, must be considered in the light of the effect of such arrangements upon the station's ability to operate in the public interest. The Communications Act of 1934, as amended (Sections 308(b) and 307(d)), requires that consideration be given to the financial qualifications of applicants for licenses or renewal of licenses. The fact that this station is licensed to a State educational institution does not relieve the Commission of the responsibility of examining the financial qualifications of the applicant. WGST is not a non-commercial educational station but is operated by the school as a commercial enterprise. If the basis upon which the station is proposed to be operated is unsound from a financial standpoint, we cannot assume that the State will supply the deficiencies from public funds and no attempt was made to establish in the record that the State would meet any operating deficits.

[fol. 76] 2. The obligation imposed upon the station, under this agreement, of paying 15% of its gross income for a period of more than 7 years raises grave doubts that future operation of the station in the public interest is possible. Although from the station's income it would appear that the new arrangement lessens the station's operating costs because of the removal of the tax burden (with the operation of the station by a unit of the State of Georgia), the fact that the payment is from gross income would present serious problems were the station's commercial position to retrogress. Under this arrangement the station's gross income would need to be, for the next several years, at a high ratio to its net income, if the station's operations are to be conducted on a financially sound basis. Under ordinary circumstances the reduction of a station's gross income by 15%, with its operating costs remaining constant, could result in the station suffering an operating loss rather than a net profit.

3. The ability of the station to shoulder this burden successfully and in a manner assuring that its service to the public will not suffer unduly is further rendered doubtful by the fact that the payments would be made to the former stockholders of Southern Broadcasting Stations, Inc. in return for considerations which are at best of questionable value to the station. As was pointed out above, the net worth of the corporation whose stock the applicant is purchasing has not been determined. The assets of this corporation consists of contracts entered into by the corporation on the basis of former relationships with the station which the Commission found, in Docket 5903, to be in contravention of law. Without such a relationship, these contracts would appear to be valueless. Moreover, even the ownership of the station equipment, whose estimated value is far less than the amount of payments which the station may be required to make, is in question.

4. In view of the foregoing, the Commission concludes that the arrangements under the contract of April 15, 1943, would jeopardize the licensee's financial ability to conduct the future operation of the station in the public interest and that, therefore, public interest, convenience or necessity would not be served by a grant of the instant application.

5. There are additional reasons why under the arrangements made in the contract of April 15, 1943, public interest, convenience or necessity would not be served by a grant of this application. The assumption by the applicant of a burden amounting to 15% of its gross income resulting not only from the operations of Station WGST but from all new broadcasting developments, including FM and television, would have the effect of restraining the licensee from entering the field of FM and television broadcasting. Such a restraint does not appear to be in the public interest.

6. Moreover, it seems clear that the payments of 15% of the gross income represent an effort on the part of the parties to give further effect to the agreement by which control of Station WGST had been illegally transferred to Southern Broadcasting Stations, Inc. As pointed out, these payments are to continue to January 6, 1950, the date when the 1936 agreement would have expired if that contract had not been terminated. Southern Broadcasting Stations, Inc. asserts ownership to the equipment of WGST, which has

[fol. 77] an estimated value of $50,000, but its title has been questioned. Aside from that, it does not now have and never has had any legal interest in the operation of the station. Accordingly, the payments provided for in the contract of April 15, 1943, and estimated on the basis of the station's present operations to total over $300,000 represent a payment to Southern Broadcasting Stations, Inc. far in excess of that Corporation's legal interest, if any, in WGST. A grant of the renewal application under circumstances where a party to an arrangement found by the Commission to be in contravention of law would continue to profit from such arrangement would not be in the public interest since it would, in effect, condone such illegality and thwart the Commission's efforts to enforce the requirements of the Act.

7. Therefore, the Commission concludes that a granting of this application of the Georgia School of Technology for renewal of the license of radio station WGST would not serve the public interest, convenience or necessity. The application, therefore, should be denied, without prejudice, however, to the submission within ninety days by the Georgia School of Technology of a new application for a construction permit and license to operate on the same frequency, provided it is affirmatively shown that no further effect is given to the agreements between the Georgia School of Technology and Southern Broadcasting Stations, Inc., which the Commission has found in Docket 5903 and in this proceeding to be contrary to the Communications Act and incompatible with the operation of the station in the public interest.

Federal Communications Commission, T. J. Slowie, Secretary.

C. W. W. H. S. D.

Adopted September 19, 1945.

Released Sep. 20, 1945. See Section 1.231 of the Commission's Rules of Practice and Procedure.

Signed by Above. Mailed by Mail & Files, Sep. 20, 1945. W. W.

[fol. 78] EXHIBIT "I" TO ANSWER

This is to certify that the following is a true, correct, and compared excerpt from the minutes of the meeting of the Board of Regents, held October 11, 1945:

"Resolved, by the Board of Regents of the University System of Georgia that the ruling of the Federal Communications Commission having made the contract with the stockholders of Southern Broadcasting Stations, Inc. legally impossible of performance, the board hereby approves the action of its WGST Radio Committee in directing that said contract be not further complied with. This action is taken without prejudice to a fair adjustment or settlement of whatever rights the said stockholders may have, subject to the approval or consent of the Federal Communications Commission."

This the 28th day of November, 1945.

(S.) L. R. Siebert, Secretary, Board of Regents of the University System of Georgia.

[fol. 79] EXHIBIT "J" TO ANSWER

Docket File Copy. Original.

86076

6534-18

Before the Federal Communications Commission, Washington 25, D. C.

B-221

Docket No. 6534

File No. B3-R-411

In the Matter of the Application of GEORGIA SCHOOL OF TECHNOLOGY (WGST), ATLANTA, GEORGIA, for Renewal of License

ORDER

The Commission having under consideration the application (File No. B3-R-411) of Georgia School of Technology (WGST), Atlanta, Georgia, for renewal of license; and

It appearing that a Proposed Decision of the Commission was adopted on September 19, 1945 with respect to such application, and that no party to the proceedings has filed exceptions thereto or has filed oral arguments thereon;

It is hereby ordered, this 9th day of November, 1945, that the Proposed Decision heretofore adopted Be, and Is Hereby, Made a Part Hereof by Reference and Adopted as the Findings of Fact and Conclusions of the Commission: and

It is further ordered, upon consideration of the entire record that the application of Georgia School of Technology for renewal of the license of Station WGST, Be and It Is Hereby, Denied without prejudice, however, to the submission before December 18, 1945, by the Georgia School of Technology, of a new application for a construction permit and license to operate on the same frequency, pro-
[fol. 80] vided it is affirmatively shown that no further effect is given to the agreements between the Georgia School of Technology and Southern Broadcasting Stations, Inc., which the Commission has found in Docket 5903 and in this proceeding to be contrary to the Communications Act and incompatible with the operation of the station in the public interest.

It is further ordered, that Georgia School of Technology, Be, and Is Hereby, Granted a temporary license to operate Station WGST for a period ending December 18, 1945.

Federal Communications Commission.

CWW

I hereby certify that the foregoing is a correct copy of the Order of the Federal Communications Commission in Docket No. 6534.

T. J. Slowie, Secretary.

By H. S. Davis.

Signed by above. Mailed by R. Mail & Files, Nov. 15, 1945.

EXHIBIT "K" TO ANSWER

(P.74)

Form 302
(March 6, 1945)

Form Approved
Budget Bureau No. 52-R015.2

12-4-45

File No. B3-L-1917

Call letters .... WGST

UNITED STATES OF AMERICA

FEDERAL COMMUNICATIONS COMMISSION

FEDERAL COMMUNICATIONS COMMISSION
DEC 4 1945
OFFICE OF SECRETARY

APPLICATION FOR STANDARD BROADCAST STATION LICENSE

(Submit in triplicate to Federal Communications Commission, Washington, D.C. Swear to two copies)

(Give current information; do not copy engineering data from previously filed applications)

To the Federal Communications Commission:

1. Name of applicant[1] Regents of the University System of Georgia, for and on behalf of Georgia School of Technology.

2. Post-office address: State Georgia City Atlanta

Street and number 90 Forsyth Building, N. W.

3. Construction permit under which construction has been made: Application for Construction Permit filed simultaneously herewith pursuant to Commission order in Docket 6534, dated November 9, 1945.
File No. ..... Date ....., 19 .....

4. Construction of station was commenced ---- and was completed ----, and is now in satisfactory operating condition and ready for regular operation. Station in operation under temporary license.

5. Description of transmitting apparatus which has been constructed pursuant to said construction permit: *(Operating constants requested below shall be those observed after proper adjustment of the apparatus during equipment tests.)*

(a) Make RCA Manufacturing Co. Type No. SC Serial No. SC 1546

(b) Oscillator: Type of circuit Crystal Number, manufacturer's name, and type of tubes 1 RCA 843

Actual plate current per tube .010 amp Plate voltage 250 volts

(c) Last radio stage: Number, manufacturer's name, type of tubes and class of operation[2]

(P.75)

(d) Modulator or last audio stage: Number, manufacturer's name, type of tubes and class of operation 4 - RCA - 845 Class "A Prime"

Actual plate current per tube unmodulated .060 amp

Tone modulated 400 cycles 85% .060 amp Plate voltage 1200

(e) What maximum percentage of modulation was obtained on equipment tests under authorized operating conditions? 100%

(f) State name and type number of modulation monitor General Radio Type 731 A

(g) Give Federal Communications Commission approval number 1551

(h) Specify manufacturer's name, type number, and full scale reading of the following meters:
(1) In last radio stage:

Plate voltmeter Westinghouse Type DX 15000volts

Plate ammeter Westinghouse Type DX 2.5 amps

(2) Antenna ammeter Weston Model 640 12.5 amps

(i) Antenna current for authorized operation: *(If multielement antenna, give current for each element and current at point of resistance measurement.)*

Night 4.73 amperes.

Day 10.6 amperes.

(j) Maximum operating carrier power output of transmitter for satisfactory operation is 5000 watts.

(k) Maximum rated carrier power of transmitter as determined by orders of the Commission is 5000 watts.

(l) Is inverse feedback utilized? Yes If so, to what value of feedback power is transmitter adjusted? 11 d.b.

(m) What is manufacturer's recommended operating efficiency for the last radio frequency amplifier

(P.76)

5) (Description of frequency monitor.

(1) Manufacturer's name ...RCA..... Type No. ...311 AB...

(2) Serial No. ...624..... F.C.C. Approval No. ...1462...

(3) Date of original installation ...1940.....

(4) Date of last reinstatement into service ...Not out of service.....

(5) Give the following data on the calibration of the monitor during the testing of the above equipment Last frequency check:

Date	Time	Name of external checking agency	Frequency measured by external agency	Monitor reading, high or low
Nov. 2, 1945	3:00 p.m.	Van Nostrand Engineering Service	- 1 cycle	- 1.5 cycles

(p) By what method and how often will regular checks of the calibration of the frequency monitor be repeated? ...Frequency is checked twice a month by Van Nostrand Engineering Service.....

.....

6. Location of transmitter: State .....Georgia..... County .....Fulton.....
City or town ....near Atlanta..... Street and number 101 Chamblee Bridge Rd., N.E.
N. Latitude: Degrees ....33..... Minutes .....48..... Seconds ....38....
W. Longitude: Degrees ..84..... Minutes .....21..... Seconds ....24....

7. Location of studio: State .....Georgia..... County .....Fulton.....
City or town .....Atlanta..... Street and number ....90 Forsyth Street.....

8. The frequency, power, hours of operation, and call letters authorized, are as follows:
(a) Frequency .....920..... kilocycles.
(b) Power: (1) Night ...1000.....
(2) Day .....5000.....
(c) Hours of operation ....Unlimited.....
(d) Call letters ..WGST.....

(p.77)

10. Give actual costs of making installation for which construction was authorized:

...ion already operation ...der temporary ...icense.

(a) Transmitter proper, including tubes $ ----------

(b) Antenna system, including antenna, ground system, coupling equipment, and transmission line $ ----------

(c) Frequency and modulation monitors $ ----------

(d) Studio technical equipment, microphones, transcription equipment, etc. $ ----------

(e) Acquiring land $ ---------- ------

(f) Acquiring or constructing buildings $ ----------

(g) Other items, state nature $ ----------

(h) Total $ ----------

11. Attach a detailed balance sheet, as at the completion date of the authorized construction, showing applicant's financial position. See Exhibit C attached to application for construction permit, filed simultaneously herewith.

12. State changes, if any, in capitalization, and report any contracts affecting ownership not heretofore shown in the application for construction permit. ----------

None

(if none, so state)

13. (a) Has applicant any contract, arrangement, or understanding, express or implied, with a network organization for the broadcasting of chain programs? Yes

(b) Does applicant, in the event this application is granted, propose to broadcast network programs? Yes

(c) If network programs are to be broadcast, state arrangements under which they are to be obtained and attach copies of any contractual arrangement which may have been made. If the arrangement is based on an oral understanding, a written statement of the arrangement should be submitted. Any contract or written statement of arrangement, if already on file, may be incorporated by reference if accompanied by a statement that there has been no change therein since filing date, and provided reference is sufficiently o[illegible]ete by date of filing, file number, and application or other document in connection wit[illegible] which filed to permit identification

See Exhibit H attached to application for construction permit, filed simultaneously herewith.

14. Apart from the apparatus constructed, have all the terms, conditions, and obligations set forth

Mary Franken
Notary Public.

/SEAL/

(Notary Public's seal must be affixed where law of jurisdiction requires, otherwise state that law does not require seal.)

My commission expires April 30, 1949

CITY OF [redacted] Washington)
DISTRICT OF) ss.
[redacted] Columbia)

Ben Akerman, being first duly sworn, deposes and says that he is the technical director or chief engineer for Regents of the University System of Georgia, for and on behalf of Georgia School of Technology permittee or licensee of Radio Station WGST; that he examined the engineering information in the within and foregoing application and knows the contents thereof and that the matters and things therein stated are true of his own knowledge.

Ben Akerman
Technical Director or Chief Engineer

Subscribed and sworn to before [redacted] 3rd day of December 1945

Mary Franken
Notary Public

/SEAL/

My commission expires April 30, 1949

*/Must be subscribed and verified by party applicant, by one of the parties if more than one, by an officer if applicant is a corporation, or by attorney of applicant only under the provisions of rule 1.121 which must be fully explained.

(3)

FEDERAL COMMUNICATIONS COMMISSION
DEC 4 1945
OFFICE OF SECRETARY

4-3

(P 78)

ted this ..3rd... day of .December.. 19.45.

Regents of the University System of Georgia
for and on behalf of Georgia School of Technology
(Must correspond with item 1) Applicant.

By .....

Frank N. Spraddin, Chairman, Radio Committee
Regents of the University System of Georgia

(BE SURE ALL NECESSARY INFORMATION IS FURNISHED)

Subscribed and sworn to before me this 3rd day of December 19 45

.....
Notary Public.

/SEAL/

(Notary Public's seal must be affixed where law of jurisdiction requires, otherwise state that law does not require seal.)

My commission expires April 30, 1949

CITY OF [redacted] Washington)
DISTRICT OF [redacted]) ss.
[redacted] Columbia)

Ben Akerman, being first duly sworn, deposes and says that he is the technical director or chief engineer for Regents of the University System of Georgia, for and on behalf of Georgia School of Technology permittee or licensee of Radio Station WGST; that he examined the engineering information in the within and foregoing application and knows the contents thereof and that the matters and things therein stated are true of his own knowledge.

.....
Technical Director or Chief Engineer

Subscribed and sworn to before me [redacted] 3rd day of December 19 45

.....
Notary Public

/SEAL/

My commission expires April 30, 1949

[fol. 86] EXHIBIT "L" TO ANSWER

Insert No. 5,

In reply to Item 17 (a), page 27: P-4287

This application for construction permit, together with application for license being filed simultaneously herewith, is submitted in compliance with the Commission's Order, adopted November 9, 1945, in Docket No. 6534.

Docket No. 6534 involved the application of Georgia School of Technology for renewal of license of Station WGST, and in that proceeding the Commission denied the application "without prejudice, however, to the submission before December 18, 1945, by the Georgia School of Technology, of a new application for a construction permit and license to operate on the same frequency, provided it is affirmatively shown that no further effect is given to the agreements between the Georgia School of Technology and Southern Broadcasting Stations, Inc., which the Commission has found in Docket 5903 and in this proceeding to be contrary to the Communications Act and incompatible with the operation of the station in the public interest."

The agreements referred to in the above-quoted portion of the Commission's order are:

(1) Agreement dated June 18, 1936, between Regents of the University System of Georgia and Georgia School of Technology, as first parties, and Southern Broadcasting Stations, Inc., as a second party, providing for operation of Station WGST by Southern Broadcasting Stations, Inc.; and

(2) Agreement effective April 15, 1943, between The Regents of the University System of Georgia and the Stockholders of Southern Broadcasting Stations, Inc. pro-
[fol. 87] viding for the acquisition of all of the capital stock of Southern Broadcasting Stations, Inc. by the Regents.

The agreement dated June 18, 1936, was nullified by acquisition by the Regents of all of the stock of Southern Broadcasting Stations, Inc. and the subsequent dissolution of the corporation. The corporation was dissolved by order of the Superior Court of Fulton County, Georgia, dated July 17, 1943.

The agreement effective April 15, 1943, was cancelled by the Regents of the University System of Georgia by resolution adopted at a meeting of the Board of Regents held on October 11, 1945. A true and correct copy of the resolution is hereto attached as Exhibit J. The other parties to the agreement have been notified orally of the cancellation of the agreement and no payments under the agreement have been made since the issuance of the proposed decision of the Commission in Docket No. 6534 on September 20, 1945. The Board of Regents will not undertake to negotiate any adjustment or settlement with the other parties to the agreement unless and until said parties first obtain the approval or consent of the Federal Communications Commission to negotiate a settlement of whatever rights said parties may have under the agreement.

To the Federal Communications Commission:

1. Name of applicant[1] Regents of the University System of Georgia, for and on behalf of Georgia School of Technology.

2. Post-office address: State Georgia City Atlanta

Street and number 90 Forsyth Building, N. W.

3. Construction permit under which construction has been made: Application for Construction Permit filed simultaneously herewith pursuant to Commission order in Docket 6534, dated November 9, 1945.
File No. ..... Date ....., 19 .....

4. Construction of station was commenced ---- and

was completed ----, and is now in satisfactory operating

condition and ready for regular operation. Station in operation under temporary license.

5. Description of transmitting apparatus which has been constructed pursuant to said construction permit: *(Operating constants requested below shall be those observed after proper adjustment of the apparatus during equipment tests.)*

(a) Make RCA Manufacturing Co. Type No. 5C Serial No. BC 1546

(b) Oscillator: Type of circuit Crystal Number, manufacturer's name, and

type of tubes 1 RCA 843

Actual plate current per tube .010 amp Plate voltage 250 volts

(c) Last radio stage: Number, manufacturer's name, type of tubes and class of operation[2]

2 - RCA - 822

Actual night operation: Plate current per tube .350 Plate voltage 7200 If greater day power than night power is authorized, specify the following: Actual day operation: Plate current per tube .75 Plate voltage 13800 Describe fully the method and procedure of reducing power at sunset Excitation and plate voltage are reduced on final stage. Plate voltage is reduced on modulated stage.

[1] Name must be identical with that used in construction permit.

[2] Class "a" plate modulated; Class "b" linear amplifier; high efficiency linear amplifier; grid bias modulation; high efficiency grid modulation, etc.

RECEIVED DEC 5 1945

(g) Give Federal Communications Commission approval number 1551 .....

(h) Specify manufacturer's name, type number, and full scale reading of the following meters:

(1) In last radio stage:

Plate voltmeter Westinghouse Type XX 1500 volts .....

Plate ammeter Westinghouse Type XX 2.5 amps .....

(2) Antenna ammeter Weston Model 640 12.5 amps .....

(i) Antenna current for authorized operation: *(If multielement antenna, give current for each element and current at point of resistance measurement.)*

Night 4.73 ..... amperes.

Day 10.6 ..... amperes.

(j) Maximum operating carrier power output of transmitter for satisfactory operation is 5000 watts.

(k) Maximum rated carrier power of transmitter as determined by orders of the Commission is 5000 ..... watts.

(l) Is inverse feedback utilized? Yes ..... if so, to what value of feedback power is transmitter adjusted? ..... 18 ..... d.b.

(m) What is manufacturer's recommended operating efficiency for the last radio frequency amplifier stage? 25% ..... %

(n) What is the efficiency of the last radio frequency amplifier stage as now adjusted?

24.2% ..... % $\left(\frac{I_a^2 \times R_a}{E_p \times I_p} \times 100\right)$

(2)

42

75

(p) By what method and how often will regular checks of the calibration of the frequency monitor be repreated? Frequency is checked twice a month by Van Nostrand Engineering Service.

6. Location of transmitter: State Georgia County Fulton
City or town near Atlanta Street and number 101 Chesbira Bridge Rd., N.E.
N. Latitude: Degrees 33 Minutes 48 Seconds 38
W. Longitude: Degrees 84 Minutes 21 Seconds 24

7. Location of studio: State Georgia County Fulton
City or town Atlanta Street and number 90 Forsyth Street

8. The frequency, power, hours of operation, and call letters authorized, are as follows:
(a) Frequency 920 kilocycles.
(b) Power: (1) Night 1000
(2) Day 5000
(c) Hours of operation Unlimited
(d) Call letters WGST

9. In what respect, if any, does the apparatus constructed differ from that described in the application for construction permit or in the permit? None

of the international orange bands shall be from 30 to 40 feet. The white bands shall be approximately one-half of the width of the international orange bands.

Each tower shall be cleaned or repainted as often as necessary to maintain good visibility.

For night marking there shall be installed at the top of each tower at least two 100-watt lamps (A–21 clear, Traffic-Signal type) enclosed in aviation red Fresnel or prismatic (heat resisting preferred) obstruction light globes. If only one lamp is operated, the circuit shall be equipped with a relay for instant automatic switchover to the other lamp in case of lamp failure.

On levels at approximately two-thirds and one-third of the over-all height of each tower, there shall be installed at least two 100-watt lamps (A–21 clear, Traffic-Signal type) enclosed in aviation red Fresnel or prismatic (heat resisting preferred) obstruction light globes. Each light shall be mounted so as to insure unobstructed visibility of at least one light on each level from aircraft at any angle of approach.

All lighting shall be exhibited from sunset to sunrise.

At least 25 percent spare lamps shall be provided for immediate replacement purposes.

It is to be expressly understood that the issuance of the foregoing specifications is in no way to be considered as precluding additional or modified marking or lighting as may hereafter be required under the provisions of Section 303(q) of the Communications Act of 1934, as amended.

---

*THIS SPECIFICATION IS A PART OF AND SHALL BE ATTACHED TO THE CURRENT INSTRUMENT OF AUTHORIZATION.

U. S. GOVERNMENT PRINTING OFFICE [illegible]

40

Filed in office, this the 15 day of Aug. 1947

Harry Magb[illegible]
Deputy Clerk.

91

84

11. Attach a detailed balance sheet, as at the completion date of the authorized construction, showing applicant's financial position. See Exhibit C attached to application for construction permit, filed simultaneously herewith.

12. State changes, if any, in capitalization, and report any contracts affecting ownership not heretofore shown in the application for construction permit. .....

None

(if none, so state)

.....

.....

13. *(a)* Has applicant any contract, arrangement, or understanding, express or implied, with a network organization for the broadcasting of chain programs? ...Yes.....

.....

(b) Does applicant, in the event this application is granted, propose to broadcast network programs? .....Yes.....

(c) If network programs are to be broadcast, state arrangements under which they are to be obtained and attach copies of any contractual arrangement which may have been made. If the arrangement is based on an oral understanding, a written statement of the arrangement should be submitted. Any contract or written statement of arrangement, if already on file, may be incorporated by reference if accompanied by a statement that there has been no change therein since filing date, and provided reference is sufficiently complete by date of filing, file number, and application or other document in connection with which filed to permit identification .....

See Exhibit E attached to application for construction permit, filed simultaneously herewith.

.....

.....

.....

14. Apart from the apparatus constructed, have all the terms, conditions, and obligations set forth in the above-described application for construction permit or permit been fully met? .....
If not, state exceptions .....

No exceptions.

.....

15. Applicant waives any claim to the use of any particular frequency or of the other as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests a station license in accordance with this application.

F.C.C. Form No. 353

EXHIBIT "17" TO ANSWER

B3-L-1917

File No. B3-L-1918 - B3-Z-1744

Official No. 411

Call letters W G S T

UNITED STATES OF AMERICA

FEDERAL COMMUNICATIONS COMMISSION

RADIO BROADCASTING STATION LICENSE

Subject to the provisions of the Communications Act of 1934, subsequent acts, and treaties, and all regulations heretofore or hereafter made by this Commission, and further subject to conditions set forth in this license, the LICENSEE REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA FOR AND ON BEHALF OF GEORGIA SCHOOL OF TECHNOLOGY is hereby authorized to use and operate the radio transmitting apparatus hereinafter described for the purpose of broadcasting for the term beginning March 7, 1945, and ending May 1, 1947 (3 a. m., Eastern Standard Time)

The licensee shall use and operate said apparatus only in accordance with the following terms:

1. On a frequency of 920 kc.
2. With power of 1 kilo watts, with an additional 4 kilo watts from local sunrise to local sunset only. **
   Antenna current 4.59 amperes for 1 kilo watts; 10.26 amperes for 5 kilo watts.
   Antenna resistance 47.5 ohms.
3. During the following period or periods of time:

Unlimited time

**Average hour of local sunrise: Mar. 5:45 a.m.; Apr. 5:15 a.m.; May 4:30 a.m.; June 4:30 a.m.; July 4:30 a.m.; Aug. 5:00 a.m.; Sept. 5:15 a.m.; Oct. 5:45 a.m.; Nov. 6:15 a.m.; Dec. 6:30 a.m.; Jan. 6:45 a.m.; Feb. 6:30 a.m.; CST

**Average hour of local sunset: Mar. 5:45 p.m.; Apr. 6:15 p.m.; May 6:30 p.m.; June 6:45 p.m.; July 6:45 p.m.; Aug. 6:30 p.m.; Sept. 5:45 p.m.; Oct. 5:00 p.m.; Nov. 4:30 p.m.; Dec. 4:30 p.m.; Jan. 4:45 p.m.; Feb. 5:15 p.m.; CST

4. Under the call letters W G S T
5. With the main studio of the station located at:

90 Forsyth Street
Atlanta, Georgia

The apparatus hereinabove authorized to be used and operated is located at:

Cheshire Bridge Road & Seaboard Railway — Lat. 33° 48' 38.4" North.
Atlanta, Georgia — Long. 84 21 24.0 West.

and is described as follows: R.C.A. MFG. CO., Type 5-C, Broadcasting Transmitter. Direct Crystal Control. Last radio stage: two 2.5 kilowatt vacuum tubes for low level modulation (RCA-892). Maximum rated carrier power output 5 kilowatts. Antenna: 279' (289' overall height), self-supporting, uniform cross section, series-fed, vertical radiator. Ground: 180 - 300' average length copper radials.
Towers painted and lighted in accordance with the attached specifications.

For emergency purposes only, when by reason of breakdown or similar reason the said apparatus cannot be used, the licensee is authorized to use and operate (but only in accordance with the terms and conditions of this license) the auxiliary radio transmitting apparatus located at:

Cheshire Bridge Road & Seaboard Railway,
Atlanta, Georgia

with power of: 1 kilowatt

and described as follows: COMPOSITE - Broadcasting Transmitter. Direct Crystal Control. Last radio stage: one 2.5 kilowatt vacuum tube for low level modulation (RCA- 892). Maximum rated carrier power output 2½ kilowatts.

F. C. C. Form No. 715-A
(Spec. No. A 2 a-2)
(Adopted May 24, 1944)

(82)

Date 2-7-46

File No.* [redacted]

Call Letters* WOSU

OBSTRUCTION MARKING
ANTENNA TOWER(S) OR SUPPORTING STRUCTURE(S)

The tower shall be painted throughout its height with alternate bands of international orange and white, terminating with international orange at both top and bottom. The width of the international orange bands shall be from 20 to 40 feet. The white bands shall be approximately one-half of the width of the international orange bands.

The tower shall be cleaned or repainted as often as necessary to maintain good visibility.

For night marking there shall be installed at the top of the tower at least two 100-watt lamps (A-21 clear, Traffic-Signal type) enclosed in aviation red Fresnel or prismatic (heat resisting preferred) obstruction light globes. If only one lamp is operated, the circuit shall be equipped with a relay for instant automatic switchover to the other lamp in case of lamp failure.

On levels at approximately two-thirds and one-third of the over-all height of the tower, there shall be installed at least two 100-watt lamps (A-21 clear, Traffic-Signal type) enclosed in aviation red Fresnel or prismatic (heat resisting preferred) obstruction light globes. Each light shall be mounted so as to insure unobstructed visibility of at least one light on each level from aircraft at any angle of approach.

All lighting shall be exhibited from sunset to sunrise.

At least 25 percent spare lamps shall be provided for immediate replacement purposes.

It is to be expressly understood that the issuance of the foregoing specifications is in no way to be considered as precluding additional or modified marking or lighting as may hereafter be required under the provisions of Section 303(q) of the Communications Act of 1934, as amended.

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*THIS SPECIFICATION IS A PART OF AND SHALL BE ATTACHED TO THE CURRENT INSTRUMENT OF AUTHORIZATION.

EXHIBIT "N" TO ANSWER

F.C.C. Form No. 353

File No. BR-411
Official No. 411
Call letters W G S T

UNITED STATES OF AMERICA

FEDERAL COMMUNICATIONS COMMISSION

RADIO BROADCASTING STATION LICENSE

Subject to the provisions of the Communications Act of 1934, subsequent acts, and treaties, and all regulations heretofore or hereafter made by this Commission, and further subject to conditions set forth in this license, the LICENSEE ... REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA FOR AND ON BEHALF OF GEORGIA SCHOOL OF TECHNOLOGY is hereby authorized to use and operate the radio transmitting apparatus hereinafter described for the purpose of broadcasting for the term beginning May 1, 19 47, and ending May 1, 19 50
(3 a. m., Eastern Standard Time) (3 a. m., Eastern Standard Time)

The licensee shall use and operate said apparatus only in accordance with the following terms:

1. On a frequency of 920 kc.
2. With power of 1 Kilo watts, with an additional 4 kilo watts from local sunrise to local sunset only. **
   Antenna current 4.58 amperes for 1 kilo watts; 10.26 amperes for 5 kilo watts.
   Antenna resistance 47.5 ohms.
3. During the following period or periods of time:
   Unlimited time.

**Average hour of local sunrise: May, 4:30 am; June, 4:30 am; July, 4:30 am; Aug. 5 am; Sep. 5:15 am; Oct. 5:45 am; Nov. 6:15 am; Dec. 6:30 am; Jan. 6:45 am; Feb. 6:30 am; Mar. 5:45 am; Apr. 5:15 am; Central Standard Time.

**Average hour of local sunset: May 6:30 pm; June, 6:45 pm; July, 6:45 pm; Aug. 6:30 pm; Sep. 5:45 pm; Oct. 5pm; Nov. 4:30 pm; Dec. 4:30 pm; Jan. 4:45 pm; Feb. 5:15 pm; Mar. 5:45 pm; Apr. 6:15 pm; Central Standard Time.

4. Under the call letters W G S T
5. With the main studio of the station located at:
   90 Forsyth Street,
   Atlanta, Georgia.

The apparatus hereinabove authorized to be used and operated is located at:

Cheshire Bridge Road & Seaboard Railway, Atlanta, Georgia. Lat. 33° 48' 38.4" North, Long. 84 21 24.0 West.

and is described as follows: R.C.A. MFG. CO., Type 5-C, Broadcasting Transmitter. Direct Crystal Control. Last radio stage: two 2.5 kilovatt vacuum tubes for low level modulation (RCA-892). Maximum rated carrier power output 5 kilowatts. Antenna: 279' (289' overall height), self-supporting, uniform cross section, series-fed, vertical radiator. Ground: 180 - 300' average length copper radials.

Towers painted and lighted in accordance with attached specifications.

For emergency purposes only, when by reason of breakdown not due to negligence the said apparatus cannot be used, the licensee is authorized to use and operate (but only in accordance with the terms and conditions of this license pertaining to the regular radio transmitting apparatus) the following apparatus located at:

Cheshire Bridge Road & Seaboard Railway, Atlanta, Georgia.

with power of: 1 kilowatt

and described as follows: COMPOSITE - Broadcasting Transmitter. Direct Crystal Control. Last radio stage: one 2.5 kilovatt vacuum tube for low level modulation (RCA-892). Maximum rated carrier power output 2½ kilowatts.

2. With power of 1 Kilo watts, with an additional 4 kilo watts from local sunrise to local sunset only. **
   Antenna current 4.58 amperes for 1 kilo watts; 10.26 amperes for 5 kilo watts.
   Antenna resistance 47.5 ohms.
3. During the following period or periods of time:
   Unlimited time.

**Average hour of local sunrise: May, 4:30 am; June, 4:30 am; July, 4:30 am; Aug. 5 am; Sep. 5:15 am; Oct. 5:45 am; Nov. 6:15 am; Dec. 6:30 am; Jan. 6:45 am; Feb. 6:30 am; Mar. 5:45 am; Apr. 5:15 am; Central Standard Time.

**Average hour of local sunset: May 6:30 pm; June, 6:45 pm; July, 6:45 pm; Aug. 6:30 pm; Sep. 5:45 pm; Oct. 5pm; Nov. 4:30 pm; Dec. 4:30 pm; Jan. 4:45 pm; Feb. 5:15 pm; Mar. 5:45 pm; Apr. 6:15 pm; Central Standard Time.

4. Under the call letters W G S T
5. With the main studio of the station located at:
   90 Forsyth Street,
   Atlanta, Georgia.

The apparatus hereinabove authorized to be used and operated is located at:

Cheshire Bridge Road & Seaboard Railway, Atlanta, Georgia. Lat. 33° 48' 38.4" North, Long. 84 21 24.0 West.

and is described as follows: R.C.A. MFG. CO., Type 5-C, Broadcasting Transmitter. Direct Crystal Control. Last radio stage: two 2.5 kilovatt vacuum tubes for low level modulation (RCA-892). Maximum rated carrier power output 5 kilowatts. Antenna: 279' (289' overall height), self-supporting, uniform cross section, series-fed, vertical radiator. Ground: 180 - 300' average length copper radials.

Towers painted and lighted in accordance with attached specifications.

For emergency purposes only, when by reason of breakdown not due to negligence the said apparatus cannot be used, the licensee is authorized to use and operate (but only in accordance with the terms and conditions of this license pertaining to the regular radio transmitting apparatus) the following apparatus located at:

Cheshire Bridge Road & Seaboard Railway, Atlanta, Georgia.

with power of: 1 kilowatt

and described as follows: COMPOSITE - Broadcasting Transmitter. Direct Crystal Control. Last radio stage: one 2.5 kilovatt vacuum tube for low level modulation (RCA-892). Maximum rated carrier power output 2½ kilowatts.

This license is issued on the licensee's representation that the statements contained in licensee's application are true and that the undertakings therein contained so far as they are consistent herewith, will be carried out in good faith. The licensee shall, during the term of this license, render such broadcasting service as will serve public interest, convenience, or necessity to the full extent of the privileges herein conferred.

This license shall not vest in the licensee any right to operate the station nor any right in the use of the frequency designated in the license beyond the term hereof, nor in any other manner than authorized herein. Neither the license nor the right granted hereunder shall be assigned or otherwise transferred in violation of the Communications Act of 1934. This license is subject to the right of use or control by the Government of the United States conferred by section 606 of the Communications Act of 1934.

Dated this 17th day of April, 1947

By direction of the FEDERAL COMMUNICATIONS COMMISSION,

[SEAL]

Secretary.

U. S. GOVERNMENT PRINTING OFFICE 16—3070

WTB

F. C. C. Form No. 71.
(Spec. No. A 2 a 2)
(Adopted May 24, 1944)

Date 4-17-47

File No. BR-411

Call Letters W G S T

(p 24)

OBSTRUCTION MARKING
ANTENNA TOWER(S) OR SUPPORTING STRUCTURE(S)

Each tower shall be painted throughout its height with alternate bands of international orange and white, terminating with international orange at both top and bottom. The width of the international orange bands shall be from 30 to 40 feet. The white bands shall be approximately one-half of the width of the international orange bands.

Each tower shall be cleaned or repainted as often as necessary to maintain good visibility.

For night marking there shall be installed at the top of each tower at least two 100-watt lamps (A-21 clear, Traffic-Signal type) enclosed in aviation red Fresnel or prismatic (heat resisting preferred) obstruction light globes. If only one lamp is operated, the circuit shall be equipped with a relay for instant automatic switchover to the other lamp in case of lamp failure.

On levels at approximately two-thirds and one-third of the over-all height of each tower, there shall be installed at least two 100-watt lamps (A-21 clear, Traffic-Signal type) enclosed in aviation red Fresnel or prismatic (heat resisting preferred) obstruction light globes. Each light shall be mounted so as to insure unobstructed visibility of at least one light on each level from aircraft at any angle of approach.

All lighting shall be exhibited from sunset to sunrise.

At least 25 percent spare lamps shall be provided for immediate replacement purposes.

Note

For lower portion of this page see next frame.

[fol. 92] IN SUPERIOR COURT OF FULTON COUNTY

[Title omitted]

AMENDMENT TO ANSWER OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA—Filed September 25, 1947

Now comes Regents of the University System of Georgia, and with leave of Court first obtained, files this its amendment to its answer:

1. Defendant amends Paragraph 3 of its answer by adding the following: For the months from August, 1945 through August 1947, the net billings of Station WGST, as these words are known and understood in the radio industry and including only the net proceeds actually collected by Station WGST as a result of the operations of the station, together with computations of 15% of each month's net billings, are as follows:

Month		Net Billings	15% Net Billings
August	1945	$36,808.18	$5,521.23
September	1945	38,229.81	5,734.47
October	1945	38,491.76	5,773.76
November	1945	42,588.42	6,388.26
December	1945	45,933.92	6,890.09
January	1946	40,783.21	6,117.48
February	1946	38,641.28	5,796.19
March	1946	38,798.80	5,819.82
April	1946	36,592.51	5,488.88
May	1946	38,851.26	5,827.69
June	1946	41,035.34	6,155.30
[fol. 93]			
July	1946	34,261.20	5,139.18
August	1946	28,553.87	4,283.08
September	1946	31,781.37	4,767.21
October	1946	33,883.84	5,082.58
November	1946	42,666.37	6,369.96
December	1946	43,142.36	6,471.35
January	1947	36,884.16	5,532.62
February	1947	41,207.70	6,181.16
March	1947	39,740.86	5,961.13
April	1947	38,817.35	5,822.60
May	1947	38,187.85	5,728.18
June	1947	43,650.04	6,547.51
July	1947	40,928.20	6,139.23
August	1947	36,197.83	5,429.67
Total			$144,968.63

Unlimited time

**Average hour of local sunrise: Mar. 5:45 a.m.; Apr. 5:15 a.m.; May 4:30 a.m.; June 4:30 a.m.; July 4:30 a.m.; Aug. 5:00 a.m.; Sept. 5:15 a.m.; Oct. 5:45 a.m.; Nov. 6:15 a.m.; Dec. 6:30 a.m.; Jan. 6:45 a.m.; Feb. 6:30 a.m.; CST

5:45 p.m.; Apr. 6:15 p.m.; May 6:30 p.m.; June 6:45 p.m.; July 6:45 p.m.; Aug. 6:30 p.m.; Sept. 5:45 p.m.; Oct. 5:00 p.m.; Nov. 4:30 p.m.; Dec. 4:30 p.m.; Jan. 4:45 p.m.; Feb. 5:15 p.m.; CST

4. Under the call letters W G S T

5. With the main studio of the station located at:

90 Forsyth Street
Atlanta, Georgia

The apparatus hereinabove authorized to be used and operated is located at:

Cheshire Bridge Road & Seaboard Railway
Atlanta, Georgia

Lat.	33°	48'	38.4"	North.
Long.	84	21	24.0	West.

and is described as follows: R.C.A. MFG. CO., Type 5-C, Broadcasting Transmitter. Direct Crystal Control. Last radio stage: two 2.5 kilowatt vacuum tubes for low level modulation (RCA-892). Maximum rated carrier power output 5 kilowatts. Antenna: 279' (289' overall height), self-supporting, uniform cross section, series-fed, vertical radiator. Ground: 180 - 300' average length copper radials.

Towers painted and lighted in accordance with the attached specifications.

For emergency purposes only, when by reason of breakdown or similar reason the said apparatus cannot be used, the licensee is authorized to use and operate (but only in accordance with the terms and conditions of this license) the auxiliary radio transmitting apparatus located at:

Cheshire Bridge Road & Seaboard Railway,
Atlanta, Georgia

with power of: 1 kilowatt

and described as follows: COMPOSITE - Broadcasting Transmitter. Direct Crystal Control. Last radio stage: one 2.5 kilowatt vacuum tube for low level modulation (RCA- 892). Maximum rated carrier power output 2½ kilowatts.

This license is issued on the licensee's representation that the statements contained in licensee's application are true and that the undertakings therein contained so far as they are consistent herewith, will be carried out in good faith. The licensee shall, during the term of this license, render such broadcasting service as will serve public interest, convenience, or necessity to the full extent of the privileges herein conferred.

This license shall not vest in the licensee any right to operate the station nor any right in the use of the frequency designated in the license beyond the term hereof, nor in any other manner than authorized herein. Neither the license nor the right granted hereunder shall be assigned or otherwise transferred in violation of the Communications Act of 1934. This license is subject to the right of use or control by the Government of the United States conferred by section 606 of the Communications Act of 1934.

Dated this 7th day of March, 1946

By direction of the FEDERAL COMMUNICATIONS COMMISSION,

[SEAL]

[signature]
Secretary.

U.S. GOVERNMENT PRINTING OFFICE 16—3976

(37

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The tower shall be painted throughout its height with alternate bands of international orange and white, terminating with international orange at both top and bottom. The width of the international orange bands shall be from 20 to 40 feet. The white bands shall be approximately one-half of the width of the international orange bands.

The tower shall be cleaned or repainted as often as necessary to maintain good visibility.

For night marking there shall be installed at the top of the tower at least two 100-watt lamps (A–21 clear, Traffic-Signal type) enclosed in aviation red Fresnel or prismatic (heat resisting preferred) obstruction light globes. If only one lamp is operated, the circuit shall be equipped with a relay for instant automatic switchover to the other lamp in case of lamp failure.

On levels at approximately two-thirds and one-third of the over-all height of the tower, there shall be installed at least two 100-watt lamps (A–21 clear, Traffic-Signal type) enclosed in aviation red Fresnel or prismatic (heat resisting preferred) obstruction light globes. Each light shall be mounted so as to insure unobstructed visibility of at least one light on each level from aircraft at any angle of approach.

All lighting shall be exhibited from sunset to sunrise.

At least 25 percent spare lamps shall be provided for immediate replacement purposes.

It is to be expressly understood that the issuance of the foregoing specifications is in no way to be considered as precluding additional or modified marking or lighting as may hereafter be required under the provisions of Section 303(q) of the Communications Act of 1934, as amended.

---

*THIS SPECIFICATION IS A PART OF AND SHALL BE ATTACHED TO THE CURRENT INSTRUMENT OF AUTHORIZATION.

38

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Wherefore, defendant prays that this amendment be allowed and ordered filed, and that defendant be dismissed hence with its reasonable costs.

Eugene Cook, Attorney General of Georgia; Hamilton Lokey, Deputy Assistant Attorney General of Georgia.

[fol. 94] Order

The above and foregoing amendment to defendant's answer read and considered; the same is allowed and ordered filed.

This 25th day of September, 1947.

Bond Almand, Judge, S.C.A.C.

[File endorsement omitted.]

In Superior Court of Fulton County

[Title omitted]

Demurrer and Motion to Strike Answer—Filed August 28, 1947

Now come the plaintiffs in the above stated case and demur to and move to strike the answer of the defendant, Regents of the University System of Georgia, in the above stated case upon the following grounds, to-wit:

1. The answer of said defendant set forth no defense to the plaintiffs' suit and is insufficient in law and should be stricken.

2. Plaintiffs demur to, and move to strike, paragraphs 8 to 28, both inclusive, of the answer of the said defendant, Regents of the University System of Georgia, upon the following grounds, to-wit:

[fol. 95] (a) The facts set forth in said paragraphs of the said answer constitute no ground or grounds of defense to the plaintiffs' action.

(b) The matters and things set forth in said paragraphs of the answer are res inter alios acta and are in no wise binding upon the plaintiffs and are irrelevant to the action.

(c) The matters and things set forth in said paragraphs of the answer are insufficient within themselves or in connection with any other matter set forth in the answer to constitute any legal defense to the plaintiffs' action, for the reason that the plaintiffs were not parties to any of the proceedings before the Federal Communications Commission referred to in said paragraphs and therefore the plaintiffs are in no wise bound by or affected legally by said matters or by the proceedings referred to in said paragraphs.

(d) The actions of the Federal Communications Commission referred to in said paragraphs, insofar as such actions purported in any wise to affect the rights of the plaintiffs or the liability of the defendant, Regents of the University System of Georgia, under the contract sued upon in this case, were beyond any power, jurisdiction or authority of the Federal Communications Commission, and insofar as said actions are invoked as a defense in this case, the same are null, void, and of no effect, and are not in any wise binding upon the plaintiffs and cannot constitute any defense in this case.

(e) Insofar as the alleged actions, decisions and rulings of the Federal Communications Commission as set forth in said paragraphs of the answer are sought to be invoked or set up as any defense to this action, or as affecting the rights [fol. 96] of the plaintiffs or the obligations of the defendant, Regents of the University System of Georgia, the same are unconstitutional and of no effect; because to allow the same to affect, take away, or diminish the rights of the plaintiffs under the contract sued upon or to affect or relieve the defendant, Regents of the University System of Georgia, of its obligations under said contract, would be to deprive the plaintiffs of their property rights without due process of law contrary to the provisions of the Constitution of Georgia of force at said time, which provided: "No person shall be deprived of life, liberty, or property, except by due process of law," the same being Article I, Section I, Paragraph III of said Constitution, and would be contrary to the provisions of Article I, Section I, Paragraph III of the Constitution of Georgia now of force, which provides: "No person shall be deprived of life, liberty, or property, except by due process of law."

(f) To give to the acts and things set up in said paragraphs of the answer the effect which the defendant seeks to have given them would be to deny the plaintiffs the rights guaranteed to them by Article I, Section I, Paragraph II of the Constitution of the State of Georgia of force at said time, and also by Article I, Section I, Paragraph II of the present Constitution of Georgia, each of which provides; "Protection to person and property is the paramount duty of government, and shall be impartial and complete."

(g) To give to the acts and things set up in said paragraphs of the answer the effect which the defendant seeks to have given to them would be to deny to the plaintiffs the rights guaranteed to them by the Fifth Amendment to the [fol. 97] Constitution of the United States in that it would deprive plaintiffs of their property without due process of law.

(h) To give to the acts and things set up in said paragraphs of the answer the effect which the defendant seeks to have given to them would be to deny to the plaintiffs the rights guaranteed to them by the Fourteenth Amendment to the Constitution of the United States in that they would deprive plaintiff of their property without due process of law.

(i) To give to the acts and things set up in said paragraphs of the answer the effect which the defendant seeks to have given to them would be to deny the plaintiffs the rights guaranteed to them by Article I, Section X, Paragraph 1 of the Constitution of the United States in that the obligation of the contract of the plaintiffs would be impaired.

Wherefore, plaintiff prays that this demurrer be sustained.

James A. Branch, Thomas B. Branch, Jr., Attorneys for the Plaintiff.

[File endorsement omitted.]

[fol. 98] IN SUPERIOR COURT OF FULTON COUNTY

[Title omitted]

Brief of Evidence

APPEARANCES

For the Plaintiffs: Mr. James A. Branch, and Mr. Thomas B. Branch.

For the Defendants: Honorable Eugene Cook, Attorney General of Georgia, and Mr. Hamilton Lokey, Deputy Assistant Attorney General of Georgia.

PRELIMINARY STATEMENT

By agreement of all parties, made in open Court, this case was tried before Honorable Bond Almand on all issues of law and fact, without the intervention of a jury.

By agreement of all parties the evidence in this case was submitted by stipulation and by certain documentary evidence, all of which was admitted without objection.

The defendant Fulton National Bank, by its answer, did not contest the claim of the plaintiffs, merely reporting to the Court that it had in its hands a small balance of funds which it was ready to pay out as directed by the court.

The defendant Regents of the University System of Georgia, by its answer admitted a prima facie case in favor of the plaintiffs, and by further answer set out its affirmative defense. Having admitted a prima facie case, this defendant assumed the burden of proof, and introduced evidence in support of its affirmative defense as follows:

[fol. 99] EVIDENCE ON BEHALF OF DEFENDANT REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA

It was stipulated between the parties that defendant Regents of the University System of Georgia (hereinafter called "Regents") paid to plaintiff's agent, The Fulton National Bank, on behalf of the plaintiffs, from April 15, 1943 and up through the month of July, 1945, sums equivalent to fifteen percent of the net billings of Radio Station WGST for that period, in the amount of $149,408.38.

There was admitted in evidence without objection, as defendant's Exhibit 1, a certified copy of an application for renewal of the broadcasting license of the Regents'

Radio Station WGST, dated January 31, 1940 and filed by the Regents with the Federal Communications Commission (hereinafter called the "FCC"), the governmental authority to which the Congress of the United States had delegated control and regulation of licenses for radio broadcasting stations. Said application (Defendant's Exhibit 1) is identical with and is the same as the document set out as Exhibit "A" in defendant's answer, to which reference is hereby made.

It was stipulated between the parties that without such a license from the FCC, Radio Station WGST could not have lawfully operated; that at said time, January 31, 1940, Radio Station WGST was being operated for defendant Regents by a corporation known as Southern Broadcasting Stations, Inc. under a contract which by its terms had until January 6, 1950 to run; that the entire capital stock of said corporation was owned by the plaintiffs in this suit.

[fol. 100] There was admitted in evidence without objection as defendant's Exhibit 2, a certified copy of an order of the FCC, dated March 23, 1943, containing proposed findings of fact and conclusions of the Commission relative to the application for renewal of the license of Radio Station WGST, wherein the Commission, after hearing, determined that the further operation of Radio Station WGST by defendant through Southern Broadcasting Stations, Inc. was in violation of the provisions of the Federal Communications Act of 1934, and was not in the public interest. Said order (Defendant's Exhibit 2) is identical with and is the same as the document set out as Exhibit "B" in defendant's answer, to which reference is hereby made.

There was admitted in evidence without objection, as Defendant's Exhibit 3, a certified copy of an order of the FCC, dated May 8, 1943, adopting the proposed findings of fact and conclusions of the Commission of March 23, 1943 as the findings of fact and conclusions of the Commission relative to the Regent's application for license renewal, in which order the application for renewal was denied without prejudice to the filing of a further application for a renewal of license in accordance with the conclusions reached by the FCC, and in which application the Regents were to set forth the plan of the Regents for the acquisition of the necessary facilities and equipment and for the

business management, representation and control of the future operations of Station WGST. Said order (Defendant's Exhibit 3) is identical with and is the same as the document set out as Exhibit "C" in defendant's answer, to which reference is hereby made.

[fol. 101] There was admitted in evidence without objection, as Defendant's Exhibit 4, a certified copy of the second application for renewal of license, filed by the Regents with the FCC on May 22, 1943, to which application for renewal was attached a copy of the contract of April 15, 1943 between plaintiffs and defendant Regents (and upon which contract the pending suit is based) as the Regents' plan for acquiring the necessary facilities and equipment and the business management, representation and control of the future operations of the radio station. Said application (Defendant's Exhibit 4) is identical with and is the same as the document set out as Exhibit "D" in defendant's answer, to which reference is hereby made.

It was stipulated between the parties that by the contract of April 15, 1943, the Regents acquired all of the capital stock of the Southern Broadcasting Stations, Inc., later procured the transfer of all of the assets of that corporation to the Regents, and thereafter, in July of 1943, the Regents dissolved said corporation by surrendering its charter in Fulton Superior Court.

There was admitted in evidence without objection, as Defendant's Exhibit 5, a certified copy of an order of the FCC, dated October 12, 1943, assigning for hearing before the FCC the matter of the second application for renewal of license filed by the Regents on May 22, 1943. Said order (Defendant's Exhibit 5) is identical with and is the same as the document set out as Exhibit "E" in defendant's answer, to which reference is hereby made.

[fol. 102] There was admitted in evidence without objection, as Defendant's Exhibit 5-A, a copy of certain rules of the FCC which were attached to and referred to in the notice of hearing of October 12, 1943 (Exhibit 5), relative to such matters as appearances, interventions and pleadings. A copy of Defendant's Exhibit 5-A is attached to this brief of evidence, with leave of reference prayed.

There was admitted in evidence without objection, as Defendant's Exhibit 6, a certified copy of a petition filed by the Regents with the FCC on November 4, 1943 for a

grant of the license renewal application dated May 22, 1943 without a hearing. Said petition is identical with and is the same as the document set out as Exhibit "F" in defendant's answer, to which reference is hereby made.

There was admitted in evidence without objection, as Defendant's Exhibit 7, a certified copy of an order of the FCC, dated November 23, 1943, denying the petition of the Regents for the grant of the license renewal without hearing. Said order is identical with and is the same as the document set out as Exhibit "G" in defendant's answer, to which reference is hereby made.

It was stipulated between the parties that subsequent to November 23, 1943 the matter of the license renewal application was heard by the FCC and testimony was given by witnesses for the defendant Regents, including Hon. Ellis Arnall, Governor of Georgia, Marion Smith, Chairman of the Board of Regents, Sandy Beaver and Frank M. Spratlin, members of the Board of Regents, Hon. T. Grady Head, Attorney-General of Georgia, and John Fulton, Manager of Radio Station WGST.

[fol. 103] There was admitted in evidence without objection, as Defendant's Exhibit 8, a certified copy of an order of the FCC, dated September 19, 1945, containing proposed findings of fact and conclusions of the Commission relative to the Regents' second application for license renewal, wherein the Commission, among other things said: "In view of the foregoing, the Commission concludes that the arrangements under the contract of April 15, 1943, would jeopardize the licensee's financial ability to conduct the future operation of the station in the public interest and that, therefore, public interest convenience or necessity would not be served by a grant of the instant application." Said order (Defendant's Exhibit 8) is identical with and is the same as the document set out as Exhibit "H" in defendant's answer, to which reference is hereby made.

It was stipulated between the parties that upon receipt of the notice of the action of the FCC of September 19, 1945, the Regents made no further payment to petitioners under the contract of April 15, 1943.

There was admitted in evidence without objection, as Defendant's Exhibit 9, a certified copy of a resolution passed by the Board of Regents, the governing body of the defendant Regents, on October 11, 1945, directing that no

further payments be made by defendant Regents under said contract. Said resolution (Defendant's Exhibit 9) is identical with and is the same as the document set out as Exhibit "I" in defendant's answer, to which reference is hereby made.

There was admitted in evidence without objection, as Defendant's Exhibit 10, a certified copy of an order of the FCC, dated November 9, 1945, adopting the proposed find-
[fol. 104] ings of fact and conclusions of the Commission of September 19, 1945 as the findings of fact and conclusions of the Commission relative to the Regents' second application for license renewal, in which order the second application for renewal was denied without prejudice to the filing of a further application for renewal, by December 18, 1945, provided the Regents affirmatively showed in said application that it was giving no further effect to the agreements between Georgia School of Technology and Southern Broadcasting Stations, Inc. Said order (Defendant's Exhibit 10) is identical with and is the same as the document set out as Exhibit "J" in defendant's answer, to which reference is hereby made.

There was admitted in evidence without objection, as Defendant's Exhibit 11, a certified copy of the third application for renewal of license, filed by the Regents with the FCC on December 4, 1945. Said application (Defendant's Exhibit 11) is identical with and is the same as the document set out as Exhibit "K" in defendant's answer, to which reference is hereby made.

There was admitted in evidence, without objection, as Defendant's Exhibit 12, a certified copy of a statement attached as an exhibit to said third application for renewal of license, in which the Regents showed affirmatively its actions in regard to cancellation of the contract of April 15, 1943. Said statement (Defendant's Exhibit 12) is identical with and is the same as the document set out as Exhibit "L" in defendant's answer, to which reference is hereby made.

There was admitted in evidence, without objection, as Defendant's Exhibit 13, a certified copy of a radio broad-
[fol. 105] casting station license granted by the FCC to defendant Regents on March 7, 1946, in accordance with the third application filed by the Regents on December 4, 1945, the license covering the period from March 7, 1946 to May

1, 1947. Said license (Defendant's Exhibit 13) is identical with and is the same as the document set out as Exhibit "M" in defendant's answer, to which reference is hereby made.

It was stipulated between the parties that from the time in 1940 when the defendant Regents' previous license expires, until March 7, 1946, when the Regents' subsequent license was issued, the Regents operated Radio Station WGST under temporary licenses granted by the FCC.

There was admitted in evidence, without objection, as Defendant's Exhibit 14, a certified copy of a further renewal of the defendant Regents' license, granted by the FCC, said license covering the period from May 1, 1947 to May 1, 1950. Said license (Defendant's Exhibit 14) is identical with and is the same as the document set out as Exhibit "N" in defendant's answer, to which reference is hereby made.

It was stipulated between the parties that Southern Broadcasting Stations, Inc., which was owned by plaintiffs prior to April 15, 1943, was a party as intervener to the proceedings before the FCC which resulted in the proposed findings of fact and conclusions of the Commission of March 23, 1943, and the final order of the FCC of May 8, 1943, which orders of the Commission are Exhibits 2 and 3 of this brief of evidence (Exhibits "B" and "C" of defendant's answer, to which reference is hereby made); that the proceeding before the FCC in which the corporation, Southern Broadcasting Stations, Inc., was a party by intervention, [fol. 106] was designated by the FCC as "Docket Number 5903."

The following is taken verbatim from the transcript of the testimony in the trial of this case:

Mr. Lokey (attorney for defendant): "The next paragraph is likewise a stipulation, that petitioners had actual knowledge of the filing of the second application for renewal of the license referred to in paragraph twelve of the answer and which was designated by the FCC as Docket number 6534; that petitioners had actual notice of hearing dated October 12th, 1943, referred — in paragraph thirteen of defendant's answer; that petitioners had actual knowledge of the hearing before the FCC and of the proposed decision of the FCC of September 19th, 1945, both referred to in paragraph sixteen of the defendant's answer; that petitioners also had actual knowledge of the final order of

the FCC dated November 9th, 1945, referred to in paragraph eighteen of defendant's answer; that the petitioners had actual knowledge of the above matters at the time said matters were taking place and that under the law petitioners had the right to intervene as parties at interest in Docket number 6534, the same as Southern—that part, of course, is a conclusion. That is not a stipulation.

"The Court: That is contention?

"Mr. Lokey: That is our contention, your Honor. The stipulation ends with the petitioners had actual knowledge of the above matters at the time said matters were taking place, and the rest of it is our contention that under the law the petitioners had a right to intervene in 6534 the same as Southern Broadcasting Stations had intervened in Docket 5903.

[fol. 107] "This is also a stipulation; I believe this is really a matter of law but it is stipulated that at the time the petitioners entered into said contract of April 15, 1943, with defendants they knew that the operation of said radio station depended upon a license to so operate from the FCC and that said operation was subject to Federal regulations and control under the Communications Act of 1934 as administered by the FCC. The petitioners also knew that under said Communications Act of 1934 the FCC had jurisdiction over any contract or agreement affecting the operation of a radio station in the public interest or affecting the present or future financial ability of a radio station to operate in the public interest. It is our contention that—the balance of the paragraph is a contention of ours that the FCC in its orders of September 19th, 1945, and November 9th, 1945, which are Exhibits H and J, I don't recall now what my numbers are over there, that they found this particular contract to be that type of contract and the allegation is made there that the FCC did have jurisdiction over the subject matter and over said contract. We contend that paragraphs four, five and six of Exhibit H and paragraph four of Exhibit J establish the fact that the Commission did find this contract to be that type of contract."

It was stipulated between the parties that in the hearing before the FCC based upon the notice of hearing of October 12, 1943, the evidence as to the value of the equipment of the radio station acquired by defendant Regents from the plaintiffs or Southern Broadcasting Stations, Inc. ranged

[fol. 108] between $40,000.00 and $70,000.00 and that at that time, which was in 1943, such equipment was very difficult, if not impossible, to acquire.

It was stipulated between the parties that the license under which Radio Station WGST was operating in April of 1943 was a temporary license and extension of its prior license, and that said license and extension of said license has expired.

Defendant Regents of the University System of Georgia rests.

EVIDENCE ON BEHALF OF PLAINTIFFS

There was admitted in evidence, without objection, as Plaintiff's Exhibit No. 1, the original contract between the parties, dated April 1943, being the contract sued on, and having attached thereto an inventory of the equipment of Radio Station WGST and a list of outstanding contracts of Southern Broadcasting Stations, Inc. with third parties. Said contract (Plaintiff's Exhibit 1) is identical with and is the same as the document set out as Exhibit "A" of the plaintiff's petition, to which reference is hereby made.

There was admitted in evidence, without objection, as Plaintiff's Exhibit 2 a letter from Clarence H. Calhoun, one of the plaintiffs, to Marion Smith, Chairman of the Board of Regents, dated September 22, 1945. A copy of plaintiff's Exhibit 2 is attached to this brief of evidence, with leave of reference prayed.

There was admitted in evidence without objection as Plaintiff's Exhibit 3, a letter from Sandy Beaver, a member of the Board of Regents, to Clarence H. Calhoun, dated [fol. 109] September 26, 1945. A copy of Plaintiff's Exhibit 3 is attached to this brief of evidence, with leave of reference prayed.

There was admitted in evidence, without objection, as Plaintiff's Exhibit 4, a letter from Clarence H. Calhoun to Marion Smith, dated September 25, 1945. A copy of Plaintiff's Exhibit 4 is attached to this brief of evidence, with leave of reference prayed.

There was admitted in evidence, without objection, as Plaintiff's Exhibit 5, a letter from Clarence H. Calhoun to Marion Smith, dated September 28, 1945. A copy of Plaintiff's Exhibit 5 is attached to this brief of evidence, with leave of reference prayed.

There was admitted in evidence, without objection, as Plaintiff's Exhibit 5, a letter from Marion Smith to Clarence H. Calhoun, dated October 2, 1945. A copy of Plaintiff's Exhibit 6 is attached to this brief of evidence, with leave of reference prayed.

Plaintiffs rest.
The Evidence Was Closed.

DEFENDANT'S EXHIBIT 5-A

Section 1.382 (b). In order to avail himself of the opportunity to be heard, the applicant, in person or by his attorney, shall, within 15 days of the mailing of the notice of designation for hearing by the Secretary, file with the Commission a written appearance stating that he will appear and present evidence on the issues specified in the statement of reasons furnished by the Commission on such date as may be fixed for the hearing. In cases other than [fol. 110] standard broadcast, high frequency broadcast, international broadcast and television, the applicant will accompany his appearance with an additional copy of his application and supporting documents.

Section 1.102. Intervention. Petitions for intervention must set forth the grounds of the proposed intervention, the position and interest of the petitioner in the proceeding, the facts on which the petitioner bases his claim that his intervention will be in the public interest and must be subscribed and verified in accordance with Sec. 1.122. The granting of a petition to intervene shall have the effect of permitting intervention before the Commission but shall not be considered as any recognition of any legal or equitable right or interest in the proceeding. The granting of such petition shall not have the effect of changing or enlarging the issues which shall be those specified in the Commission's notice of hearing unless on motion the Commission shall amend the same.

Section 1.122. Pleadings. All pleadings (not including applications or amendments thereto) filed by any party represented by an attorney, shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an

attorney shall sign and verify his pleading and state his address. Except when otherwise specifically provided by rule or statute, pleadings signed by the attorney for a party need not be verified or accompanied by affidavit. The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, [fol. 111] information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the matter may proceed as though the pleading had not been served. For a wilful violation of this rule an attorney may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

PLAINTIFF'S EXHIBIT 2

September 22, 1945.

Mr. Marion Smith, Hurt Building, Atlanta 3, Georgia.

MY DEAR MR. SMITH:

I now have a copy of the proposed decision on which I would like to make some comment to you as follows:

I will not touch on the "Preliminary Statement."

Under "Findings of Fact," paragraph 6, they find the value of equipment to be $50,000.00. Equipment was not the consideration of the contract between the stockholders and the Regents. The stockholders sold and transferred all the shares of stock in the corporation which carried with it each and every asset, namely, valuable contracts for sale of time, relationship with the largest and best advertising agencies, nationally and locally, which were acquired at considerable expense to the corporation, valuable service agreements with procuring agencies, employees, prepaid advertising, prepaid insurance premiums, innumer- [fol. 112] able assets such as furnishings including the recent redecorating and refurnishing of the offices and studios, a very favorable lease contract on the premises, in fact, a going business that had been successful and has continued

to be a successful thing. All this in addition to equipment considered in the report.

I say without any fear of contradiction that the position taken by the Commission as to the sale price being restricted by the value of physical equipment is contrary to the rule and has not been followed by the Commission in previous sales and is not being followed today, so they are making an exception of this case. I probably have my opinion as to the reasons for it but I could be wrong so will not suggest same.

I understand as late as yesterday the Commission approved the sale of a station at Fort Lauderdale, Florida, and I am told that the consideration was $500,000.00 and that the probably investment in equipment would not exceed $50,000.00 to $60,000.00. Note the inconsistency here. You could and I would be glad to help you list innumerable like transactions receiving Commission approval. You have only to look around locally and ascertain the consideration for the sale and transfer of WSB many, many times the value of its physical assets. This is an unchallengeable position to take because, of course, the Commission would never accede that these were approved because of the value of a license held by the seller which, under the law, he has no property right in.

I have a strong opinion but reserve the same as to what is the real trouble here and, likewise, what you, as the [fol. 113] applicant, have a right to insist upon. I will discuss this with you or any member of the Board.

I do not question for a minute that the members of the Board entertain any idea that they will not be granted a license for the reason that this is not the policy of the Commission and in the instant case I don't think you could find any person conversant with the policies and practices of the Commission that would accept the statement that they would deny the State of Georgia a license. The informed persons would go along with me on this, I think, 100%.

The whole history of the operation would destroy the conclusions set out under paragraph 2.

The history of the operation, earnings and profits, would destroy the conclusion set out in paragraph 3. The Commission passes over a most important fact and that is that the applicant is the State of Georgia, solvent and able to carry out its contracts.

The brazen suggestion or requirement that the State of Georgia be told that it must repudiate the contract made in good faith and with all the facts before the parties is unheard of and certainly the Commission could not stand up under a sincere and factual presentation of the case.

It is known to me that the Commission through its Chairman gave to this Board the privilege of making the contract they thought was right and fair, therefore, the Board has every right to pursue its application for license and receive the same, notwithstanding the untenable position that the Commission takes. I would like to be cooperative with the Board in working this out.

[fol. 114] Please do not consider too lightly the fact that the Commission is not following its policy and procedure in attempting to set up value on physical assets as a yardstick for the sale of the Company because you will find very easily that this has not been their policy. That they are permitting these sales constantly where the consideration of the sale far exceeds such assets.

The question is raised that the obligations of the contract to pay commissions for the remaining years could become a burden on the State that would impair its operation to the extent of showing an operating loss rather than a profit. Again, past operations and results year by year refute this but, nevertheless, their fear of this can be easily overcome should the contracting parties enter into a stand-by agreement providing that in any year that by ordinary accounting methods this was determined that the State's obligation to pay would be postponed. This certainly takes the fight out of the Commission's position. It must be said that they have nothing to support these conclusions, they are wholly without any evidence or any experience to support such findings.

With kindest regards, I am

Very truly yours, Clarence H. Calhoun.

CHC:MM.

[fol. 115] PLAINTIFF'S EXHIBIT 3

September 26, 1945.

Mr. Clarence H. Calhoun, 710 Rhodes-Haverty Building, Atlanta, Georgia.

MY DEAR CLARENCE:

The copy of your letter to Mr. Marion Smith answers all the questions I have in mind, and I presume that he will take the necessary legal steps to protect your and our interests.

If it develops that you think I can be of service, do not hesitate to command me.

In the meantime, with every good wish, believe me,

Sincerely yours, (S.) (Sandy Beaver.)

SB;ed

PLAINTIFF'S EXHIBIT 4

September 25, 1945.

Mr. Marion Smith, Hurt Building, Atlanta 3, Georgia.

DEAR MR. SMITH:

I realized when I made broad statements to you that you would expect me to present competent proof and I believe I have it and submit the following:

Annually a report of Committee on Appropriations, gen-[fol. 116] erally sub-committee does the work, for independent office expenses is filed with the Appropriation Committee and a copy of this goes into the Communications Commissions Library. Also any member of the Committee, and I believe our friend, Sidney Camp is a member of this Committee, will furnish any number of copies of this report, so it is from this report that Mr. Porter has furnished me with the following statistical information on sales of broadcast stations.

Date	Station	Replacement Costs	Sales Price
1939	WSB	$286,507.00	$1,826,125.00
1940	WAGA	$116,000.00	Of 60% $ 100,000.00 (see below)
1941	WFTL	$ 10,395.00	$ 50,000.00
1944	WFTL	$171,000.00	$ 275,000.00 (See note below)
1942	WMCA	$431,000.00	$1,225,000.00
1944	WSAI	$145,634.00	$ 550,000.00
1944	KJBF	$ 46,595.00	$ 200,000.00
1944	KQV (Pittsburgh)	$ 29,642.60	$ 575,000.00
1944	WINX	$ 58,000.00	$ 500,000.00 (See below)
1944	WJJD (Daytime Only)	$183,211.00	$ 696,000.00
1944	WBEM	$181,045.00	$ 620,000.00
1944	WQXR	$ 79,000.00	$ 987,000.00 (See below)
1945	WLW Estimate	$700,000.00	$5,000,000.00 (See note below)

WAGA when sold in 1940 had been a constant and continuous headache. It lost money and showed no profits, but 60% of the $116,000.00 replacement which was largely building improvements downtown, was sold for $100,000.00 [fol. 117] but despite this, the sale for $69,600.00 at $100,000.00 was approved.

WFTL, and note the sale price, has been notoriously known as a station showing constant losses and large expenditures were made to improve frequency, increased power, add new equipment, and still was sold and transferred at the figure shown.

KQV was pointed out by Mr. Porter as probably the most comparable station to WGST, note the figures on it.

WINX is not a regional station, it is a 250 watt transmitter classed as strictly local station.

WJJD, you will note, is restricted to daytime use, generally regarded as not a good operation.

WQXR—this one deserves special attention. Not the letters themselves—they indicate this is not standard broadcast, that is, not in the standard broadcast band. Its frequency being 1560 which is high frequency and many sets will not pick it up, but not the sale. This was sold to New York Times.

WLW is really a great station but the report will show you that the petitioners did not disclose the amount allocated to the radio station which was bought in connection with other Crosley properties, nor did they disclose the stock-

holders of the purchasing Company. This has always been a matter of the strictest requirement of information to be furnished but it has come up for discussion and finally the figures I gave you were made known, but not until after Commission approval was had.

I feel that I have demonstrated that my discussion with you and my representations to you were not pure conver- [fol. 118] sation. Mr. Porter tells me that there are many others that could be dug up for he says he can recall no station where the Commission has taken any such position as they are taking in your case.

It is not conceivable that the State of Georgia should not be shown the same treatment as private traders to which you, of course, will agree. If there is to be any favoritism shown as between private traders and the State of Georgia, I would think that the preference would be shown to Georgia.

I discussed procedure and remedies and personnel with Mr. Porter and I would be glad to discuss this with you at your convenience.

I beg to suggest that request for oral hearing must be made within 20 days. Other procedure can come later. I know you will keep my communication confidential to the extent that it will not be passed on to parties representing you for the resentment would be great when they realize that I have pointed out these things to you, probably unknown to you and not used in your behalf.

Very truly yours, Clarence H. Calhoun.

CHC:MM

[fol. 119] PLAINTIFF'S EXHIBIT 5

September 28, 1945.

Mr. Marion Smith, Chairman, Hurt Building, Atlanta 3, Georgia.

DEAR MR. SMITH:

I have given some further thought to procedure which I think is entirely proper and necessary on behalf of the Board of Regents looking to the protest to the Commission's proposing order and the procuring of favorable order in its stead and in behalf of the former stockholders

of Southern Broadcasting Stations, Inc., I would request that you give it serious consideration and take some action thereon.

The Commission has gone a very long way in the hunt for reasons to refuse or deny your pending application for a license. The former stockholders of SBS and the Board of Regents now operating WGST are completely divorced from any operation of WGST, and there remains only contract of purchase by the State of the stock of the SBS. Contract was made more than two years ago after conferences with the Commission and a mode of payment and amount of payment considered fair and satisfactory to both parties fixed in the contract. This contract is a subject over which they had no jurisdiction in the first place, and in the second place, have referred to Congress, and in the third place have exercised no jurisdiction over such agreements and have issued licenses where the consideration was in keeping with consideration in the contract under question and greater. [fol. 120] I have heretofore given you some demonstrations of this.

I recommend and urge the following procedure:

1. Request for oral argument.
2. Exceptions to the proposed order.
3. The adoption of appropriate resolution by the appropriate authorities, namely the Committee of the Board of Regents detailed to handle the operation of WGST in which the authority would guarantee future operating expenses of WGST during the remainder of the contract period or until December 31, 1949.

This to become a part of the petition to reopen the record and have such resolution included therein without further formal proceedings filed. It is essential to have this a part of the record.

With such evidence before the Commission, additional proposed findings would be in order.

If the future proposed findings should be of the same purport as the present ones, you will have firmly nailed the Commission down to the single proposition that the amount of money to be paid by the State is excessive. This is a subject matter over which they have no jurisdiction and which they left to the good judgment and conscience of the

Board of Regents, and to which they have no legal right to resort.

It would follow that they would issue additional proposed findings and if found to be of the same tenor as at present, assuming that the exceptions had been filed and the oral argument requested, counsel for the Regents should appear and make a very brief argument to the general effect:

[fol. 121] "There is no question in this record as to the technical, financial and legal ability of Georgia School of Technology to continue the operation of the station. The Commission has already found that the State will have entire and complete control of the station, its programs and operation, and that any semblance of the former control by other persons has been fully removed. Therefore, there is presented the lone question as to whether the Commission will assume jurisdiction upon the question of price to be paid for equipment and insert its judgment on that question. In this connection the Commission either has refused in the past to assume jurisdiction or has approved purchase prices far in excess of that now involved in the long list of cases (and here cite the cases). Furthermore, in one of the cases cited, Commission did not even have before it the amount of money involved in the transaction although it approved the transfer of license.

"Therefore, the case has now become a clear-cut one and the Commission may be assured from the record and the representations made to it by the highly responsible officials in charge of the station operation, namely the Regents of the University of Georgia, will take every lawful course within its means to effect a correct interpretation of the law."

I must apologize, of course, for suggesting the sort of argument to be used but I am moved to do this upon advice of competent authority, well-skilled in procedure, the acts and doings of the Commission.

I am not unmindful that you recognize the obligations of the contract made with those with whom I am associated [fol. 122] and that you believe firmly that it was fair then and should be discharged and that you are willing to discharge the obligations undertaken therein. I hope that you

will give consideration to these suggestions and take steps to prevent a final order passed on the proposed order.

My kindest regards to you, I am

Very truly yours, Clarence H. Calhoun.

CHC:MM

PLAINTIFF'S EXHIBIT 6

October 2, 1945.

Mr. Clarence H. Calhoun, 710 Rhodes-Haverty Bldg., Atlanta, Ga.

DEAR CLARENCE:

I have your letter of the 28th.

As I feel at present I do not think we can carry this litigation further. I think the result the Commission has reached is unfair, but I think we have presented everything we could present to them. I am ready to work along any lines that would treat your group fairly without imperiling the status of the license, and as I explained to you when you were in the office will try to find out what would be approved along this line by the Commission.

I am sending your letter and a copy of this reply to Frank Spratlin, Chairman of our Special Committee, and you of course are at liberty to discuss it further with him and with the Committee.

Very truly yours, (S.) Marion Smith.

MS-G

Copy—Mr. Spratlin—With enclosure. MS.

[fol. 123] NOTICE

To Honorable James A. Branch, Thomas B. Branch, Jr., Attorneys for W. E. Carroll, et al., Hurt Building, Atlanta, Georgia:

Please take notice that the above and foregoing brief of evidence will be presented to Honorable Bond Almand, Judge of the Fulton Superior Court, for approval at the Fulton County Court House, Atlanta, Georgia, at 9:30 a. m.

Wednesday morning, October 29. You are invited to be present at that time.

This October 28, 1947.

Hamilton Lokey, Attorney for Regents of the University System of Georgia.

We the undersigned attorneys for W. E. Carroll, et al., plaintiffs in the above entitled matter, hereby acknowledge service of the above and foregoing notice, and acknowledge service of a copy of the proposed brief of evidence in this case, and hereby waive such notice and consent for the court to approve the above and foregoing as the brief of evidence in this case.

This 29 day of October, 1947.

J. A. Branch, (by H. L.), Thomas B. Branch, Jr., (by H. L.), Attorneys for W. E. Carroll, et al.

[fol. 124] In Superior Court of Fulton County

Fulton Superior Court, Number A-937

W. E. Carroll, et al.

vs.

Regents of the University System of Georgia

Judge's Certificate to Brief of Evidence—October 29, 1947

I, Bond Almand, Judge of the Fulton Superior Court (Atlanta Circuit), do approve the foregoing brief of evidence in the case of W. E. Carroll, et al. vs. Regents of the University System of Georgia, Number A-937, Fulton Superior Court, consisting of pages 1 through 9, and the attached exhibits to said brief of evidence, being defendant's Exhibit 5-A and plaintiff's Exhibits 2, 3, 4, 5, and 6, consisting of pages 10 through 22, as a true and correct brief of evidence adduced upon the trial of the foregoing case before me on September 25, 1947. The Clerk of the Fulton Superior Court is directed to file said brief of evidence and a copy of this order as a part of the records in this case.

This 29th day of October, 1947.

Bond Almand, Judge, Fulton Superior Court, (Atlanta Circuit.)

[File endorsement omitted.]

[fol. 125] IN SUPERIOR COURT OF FULTON COUNTY

Number A-937, Fulton Superior Court

W. E. CARROLL, et al.

v.

REGENTS OF THE UNIVERSITY, SYSTEM OF GEORGIA, et al.

FINDINGS OF FACT AND LAW—Filed October 6, 1947

STATEMENT OF CASE

The above stated case has been submitted to the Court for final trial and disposition without the intervention of a jury upon all issues of fact and law and with the right of either party to except to the judgment and order entered herein.

The case was submitted to the Court upon the pleadings, agreed stipulation of the parties as to facts, and certain documentary evidence.

There is no dispute between the parties as to the material and essential facts in this case. There is no contention that the contract between the plaintiffs and defendant Board of Regents of April 15, 1943, is invalid or unenforceable by reason of fraud on the part of the plaintiffs which would legally relieve the defendant Board of Regents from performing such contract. There is no evidence before the Court to show that at the time the contract was consummated the defendant Board of Regents did not believe that the consideration paid for the purchase of the stock in the Southern Broadcasting Stations, Inc. was a fair and just consideration. There is nothing in the contract of April 15, 1943, that indicates that the validity or enforcement of the contract was subject to any act of approval or disapproval of the Federal Communications Commission, nor does the Court find anything in the record or the Act of Congress [fol. 126] creating the Federal Communications Commission that requires the plaintiffs to intervene in the Federal Communications Commission proceeding or that required the plaintiffs to appeal the order of September 19th, 1945.

Findings of Fact and Law

From a consideration of the evidence and the law applicable thereto the Court concludes as follows:

1. The plaintiffs have fully complied as of this date with all the conditions and obligations required of them under the contract dated April 15, 1943, between the plaintiffs and the defendant Board of Regents.

2. The Board of Regents after acquiring the stock of the plaintiffs in the Southern Broadcasting Stations, Inc. has surrendered its charter and placed the title to all the physical assets formerly owned by the corporation in the Board of Regents and is not now in a position to restore the parties to the status they occupied on April 15, 1943.

3. The plaintiffs were not parties to the proceedings before the Federal Communications Commission entitled "In the matter of the application of Georgia School of Technology (WGST), Atlanta, Georgia. For renewal of license. Docket Number 6534."

4. The Federal Communications Commission was without jurisdiction to nullify, change or anywise modify the duties and obligations of the parties to the contract of April 15, 1943.

5. That portion of the order of the Federal Communications Commission of November 9th, 1945, to-wit:

[fol. 127] "It Is Further Ordered, Upon consideration of the entire record that the application of Georgia School of Technology for renewal of the license of Station WGST, Be, and it Is Hereby, Denied without prejudice, however, to the submission before December 18, 1945, by the Georgia School of Technology, of a new application for a construction permit and license to operate on the same frequency, provided it is affimatively shown that no further effect is given to the agreements between the Georgia School of Technology and Southern Broadcasting Stations, Inc., which the Commission has found in Docket 5903 and in this proceeding to be contrary to the Communications Act and incompatible with the operation of the station in the public interest." does not constitute a valid defense or bar as a matter of fact or law to the right of the plaintiffs to enforce the provisions of the contract of April 15, 1943, on

the ground that said order has rendered performance on the part of the defendant Board of Regents impossible.

6. The defendant Board of Regents cannot now assert that the physical properties, equipment and other assets received by the defendant Board of Regents from the plaintiffs and Southern Broadcasting Stations, Inc. was less in value than the amount of money that has been paid the plaintiffs under the contract to August, 1945.

7. The plaintiffs are entitled to have the defendant Board of Regents to account to them for fifteen per cent of the net billings received by the defendant Broad of Regents from the operation of Radio Station WGST from August 1, 1945, to September 1, 1947.

8. That on a proper accounting from the date of the defendant Board of Regents' last payment under this con- [fol. 128] tract (month of July, 1945) to September 1st, 1947, the defendant Board of Regents is found to be indebted to the plaintiffs according to the monthly tabulation set out in the amendment filed by the Board of Regents on September 25, 1947, with interest at seven per cent per annum on each monthly statement from the due date of each monthly account.

In support of the above and foregoing conclusions the Court cites the following authorities: *Radio Station W. O. W., Inc. v. Johnson,* 326 U. S. 120; also same case in 14 N. W. (2d) 666; *Southern Broadcasting Corporation v. Carlson,* 178 Sou. 505; Code Section 20-903. As to the contention that the plaintiffs knew that performance on the part of the Board of Regents was dependent upon the operation of the radio station and that such operation was dependent upon the granting of the license by the Federal Communications Commission, and, therefore the plaintiffs' rights stand or fall by what the Communications Commission did in this case, see *Malbern etc. Co. v. Chicago etc. Co.,* 182 Fed. 685 (C. C. Ark.) which holds that a railroad is not justified in refusing to observe a contract with another company for a division of rates on through shipments, apparently valid, because of an opinion of the Interstate Commerce Commission delivered in a proceeding to which neither of the companies was a party. Also the case of *Watson Brothers etc. Co. v. Jaffa Et Al.,* 143 Fed. (2d) 340 (C. C. 8th). In this case the

plaintiff sought to require the specific performance of certain agreements with the defendants relevant to the leasing of certain interstate trucking lines to the plaintiff with [fol. 129] option to purchase, and the defendants sought to defend on the basis that the right of the plaintiffs to operate over these lines had not been approved by the Interstate Commerce Commission, and therefore, the defendants could not be compelled to perform their agreement. As to this contention the Court said:

"Very Broad and comprehensive powers are conferred upon the Interstate Commerce Commission in all matters of interstate transportation, and in the exercise of its power to grant or to deny its approval to applicants for authority to operate particular interstate trucking routes it undoubtedly may hear and determine disputes between rival claimants asserting the right to carry on the same operation. In such disputes the public interest is paramount and it is for the Commission to identify and to protest the public interest in the first instance."

. . . . . .

"But the Commission remains an administrative board exercising administrative power, and is not a court, and has no judicial power, although it has and exercises a quasi judicial power."

. . . . . .

"On the other hand, a suit in equity to compel specific performance of a contract is in its nature a purely judicial action and the court which otherwise has jurisdiction may not refuse to take cognizance of it because of a mere possibility that the questions involved might be brought before an administrative tribunal. If the pleadings presented a case in equity, the court should not have dismissed it without trial of the mertis." *

[fol. 130] "It is contended for Jaffa and Holdcroft that it was beyond the power of the District court to grant any effective relief to Watson Bros., Inc., in this action because even if Jaffa were compelled by the court's decree to execute the documents required by the order of the Commission, such documents would not of themselves vest the right to operate

* [sic].

Jaffa's trucking routes in Watson Bros., Inc., and it is pointed out that all such transfers of operating rights over interstate trucking routes are without validity except as they are approved by the Commission. 49 U. S. C. A. Section 5 (2)."

"But a man's obligation under his lawful contract is not a whit less binding upon him because of the fact that an approval of the transaction must be had before the party to whom he has obligated himself can receive full benefits. The power vested in the Commission in respect to transfers of interstate trucking routes does not relegate the owners of such routes to the status of non compos persons. Such owners remain fully responsible in morals, law and equity on such undertakings as they enter into in respect to their routes. The fact that Jaffa's agreement with Watson Bros., Inc., could not of itself enable Watson Bros., Inc., to operate the routes did not justify refusal of the court to try the charge that Jaffa had become bound to fulfill the obligation undertaken by him. The mere fact that a contract or transfer is subject to the approval of a public agency is not a bar to a decree compelling a party to execute the documents necessary for the consummation of the contract or transfer." (Pages 345, 346.)

[fol. 131] Compare *Goodrum Tobacco Company v. Potts-Thompson Liquor Company*, 133 Ga., 776.

Counsel for the plaintiffs may submit to the Court on the 10th day of October, 1947, at 9:30 A. M. o'clock a final judgment and decree in accordance with the above findings.

This October 6, 1947.

Bond Almand, Judge, Superior Court, Atlanta Circuit.

[File endorsement omitted.]

Georgia,
Fulton County:

Be it remembered: That on the 25th day of September, 1947, and during the September Term, 1947, of the Fulton Superior Court, there came on to be heard before the Honorable Bond Almand, one of the judges of the Superior Court of Fulton County (Atlanta Circuit), then and there presiding, the case of W. E. Carroll, Clarence H. Calhoun, Mrs.

Mattie J. Pickard, Mrs. Emma B. Moore, and Sam Pickard, Trustee for Sam Pickard, Jr., as plaintiffs, versus Regents of the University System of Georgia, a corporation under the laws of Georgia, and Fulton National Bank, a corporation, as defendants, the same being case Number A-937 in said Court, said case coming on to be heard on all issues of law and fact before the Court without the intervention of [fol. 132] a jury, by agreement of the parties.

Be it further remembered; That said case was an action for an accounting between the parties based upon a contract between the parties executed in April, 1943, and for other equitable relief.

Be it further remembered: That at said time and place said case came on for trial upon an agreed statement of facts, stipulations of the parties, and certain documentary evidence introduced without objection, and after presentation of testimony and oral argument of counsel, the matter was submitted to the Court on all issues of law and fact, without the intervention of a jury, by agreement of all parties.

Be it further remembered: That after hearing all of the evidence and argument of counsel, the said Court took the case under advisement and on the sixth day of October, 1947, rendered and entered a preliminary order, judgment and decree therein, as follows:

"Number A-937, Fulton Superior Court

W. E. Carroll et al.

v.

Regents of the University System of Georgia et al.

"Statement of Case

"The above stated case has been submitted to the Court for final trial and disposition without the intervention of a jury upon all issues of fact and law and with the right of either party to except to the judgment and order entered herein.

"The case was submitted to the Court upon the pleadings, agreed stipulation of the parties as to facts, and certain [fol. 133] documentary evidence.

"There is no dispute between the parties as to the material and essential facts in this case. There is no contention

that the contract between the plaintiffs and defendant Board of Regents of April 15, 1943, is invalid or unenforceable by reason of fraud on the part of the plaintiffs which would legally relieve the defendant Board of Regents from performing such contract. There is no evidence before the Court to show that at the time the contract was consummated the defendant Board of Regents did not believe that the consideration paid for the purchase of the stock in the Southern Broadcasting Stations, Inc. was a fair and just consideration. There is nothing in the contract of April 15, 1943, that indicates that the validity or enforcement of the contract was subject to any act of approval or disapproval of the Federal Communications Commission, nor does the Court find anything in the record or the Act of Congress creating the Federal Communications Commission, that requires the plaintiffs to intervene in the Federal Communications Commission proceeding or that required the plaintiffs to appeal the order of September 19th, 1945.

"Findings of Fact and Law

"From a consideration of the evidence and the law applicable thereto the Court concludes as follows:

"1. The plaintiffs have fully complied as of this date with all the conditions and obligations required of them under the contract dated April 15, 1943, between the plaintiffs and the defendant Board of Regents.

[fol. 134] "2. The Board of Regents after acquiring the stock of the plaintiffs in the Southern Broadcasting Stations, Inc. has surrendered its charter and placed the title to all the physical assets formerly owned by the corporation in the Board of Regents and is not now in a position to restore the parties to the status they occupied on April 15, 1943.

"3. The plaintiffs were not parties to the proceedings before the Federal Communications Commission entitled '(In the matter of the application of Georgia School of Technology (WGST), Atlanta, Georgia. For renewal of license. Docket Number 6534.'

"4. The Federal Communications Commission was without jurisdiction to nullify, change or anywise modify the duties and obligations of the parties to the contract of April 15, 1943.

"5. That portion of the order of the Federal Communications Commission of November 9, 1945, to-wit:

'It is further ordered, Upon a consideration of the entire record that the application of Georgia School of Technology for renewal of the license of Station WGST, be and it is hereby, denied without prejudice, however, to the submission before December 18, 1945, by the Georgia School of Technology, of a new application for a construction permit and license to operate on the same frequency, provided it is affirmatively shown that no further effect is given to the agreements between the Georgia School of Technology and Southern Broadcasting Stations, Inc., which the Commission has found in Docket 5903 and in this proceeding to be contrary to the Communications Act and incompatible with the operation of the station in the public interest.' does not [fol. 135] constitute a valid defense or bar as a matter of fact or law to the right of the plaintiffs to enforce the provisions of the contract of April 15, 1943, on the ground that said order has rendered performance on the part of the defendant Board of Regents impossible.

"6. The defendant Board of Regents cannot now assert that the physical properties, equipment and other assets received by the defendant Board of Regents from the plaintiffs and Southern Broadcasting Stations, Inc. was less in value than the amount of money that has been paid the plaintiffs under the contract to August, 1945.

"7. The plaintiffs are entitled to have the defendant Board of Regents to account to them for fifteen per cent. of the net billings received by the defendant Board of Regents from the operation of Radio Station WGST from August 1, 1945, to September 1, 1947.

"8. That on a proper accounting from the date of the defendant Board of Regents' last payment under this contract (month of July, 1943) to September 1st, 1947, the defendant Board of Regents is found to be indebted to the plaintiffs according to the monthly tabulation set out in the amendment filed by the Board of Regents on September 25, 1947, with interest at seven per cent. per annum on each monthly statement from the due date of each monthly account.

"In support of the above and foregoing conclusions the Court cites the following authorities: *Radio Station W.*

O. W., Inc. v. Johnson, 326 U. S. 120; also same case in 14 N. W. (2d) 666; *Southern Broadcasting Corporation v. Carlson*, 178 Sou. 505; Code Section 20-903. As to the contention that the plaintiffs knew that performance on the [fol. 136] part of the Board of Regents was dependent upon the operation of the radio station and that such operation was dependent upon the granting of the license by the Federal Communications Commission, and, therefore, the plaintiffs' rights stand or fall by what the Communications Commission did in this case, see *Malbern etc. Co. v. Chicago etc. Co.*, 182 Fed. 685 (C. C. Ark.) which holds that a railroad is not justified in refusing to observe a contract with another company for a division of rates on through shipments, apparently valid, because of an opinion of the Interstate Commerce Commission delivered in a proceeding to which neither of the companies was a party. Also the case of *Watson Brothers etc. Co. v. Jaffa Et Al.*, 143 Fed. (2d) 340 (C. C. 8th). In this case the plaintiff sought to require the specific performance of certain agreements with the defendants relevant to the leasing of certain interstate trucking lines to the plaintiff with option to purchase, and the defendants sought to defend on the basis that the right of the plaintiffs to operate over these lines had not been approved by the Interstate Commerce Commission and, therefore, the defendants could not be compelled to perform their agreement. As to this contention the Court said:

"'Very Broad and comprehensive powers are conferred upon the Interstate Commerce Commission in all matters of interstate transportation, and in the exercise of its power to grant or to deny its approval to applicants for authority to operate particular interstate trucking routes it undoubtedly may hear and determine disputes between rival claimants asserting the right to carry on the same operation. In such disputes the public interest is paramount [fol. 137] and it is for the Commission to identify and to protest the public interest in the first instance.'"

* * * * * * *

"'But the Commission remains an administrative board exercising administrative power, and is not a court, and has no judicial power, although it has and exercises a quasi judicial power.'

* * * * * * *

" 'On the other hand, a suit in equity to compel specific performance of a contract is in its nature a purely judicial action and the court which otherwise has jurisdiction may not refuse to take cognizance of it because of a mere possibility that the questions involved might be brought before an administrative tribunal. If the pleadings presented a case in equity, the court should not have dismissed it without trial of the mertis.'*

" 'It is contended for Jaffa and Holdcroft that it was beyond the power of the District Court to grant any effective relief to Watson Bros. Inc., in this action because even if Jaffa were compelled by the court's decree to execute the documents required by the order of the Commission such documents would not of themselves vest the right to operate Jaffa's trucking routes in Watson Bros. Inc., and it is pointed out that all such transfers of operating rights over interstate trucking routes are without validity except as they are approved by the Commission. 49 U. S. C. A. section 5 (2).'

'But a man's obligation under his lawful contract is not a whit less binding upon him because of the fact that an approval of the transaction must be had before the party [fol. 138] to whom he has obligated himself can receive full benefits. The power vested in the Commission in respect to transfers of interstate trucking routes does not relegate the owners of such routes to the status of non compos persons. Such owners remain fully responsible in morals, law and equity on such undertakings as they enter into in respect to their routes. The fact that Jaffa's agreement with Watson Bros., Inc., could not of itself enable Watson Bros., Inc., to operate the routes did not justify refusal of the court to try the charge that Jaffa had become bound to fulfill the obligation undertaken by him. The mere fact that a contract or transfer is subject to the approval of a public agency is not a bar to a decree compelling a party to execute the documents necessary for the consummation of the contract or transfer.'

(Pages 345, 346.)

"Compare Goodrum Tobacco Company v. Potts-Thompson Liquor Company, 133 Ga., 776.

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* [sic].

"Counsel for the plaintiffs may submit to the Court on the 10th day of October, 1947, at 9:30 A. M. o'clock a final judgment and decree in accordance with the above findings.

"This October 6, 1947.

"(Signed) Bond Almand, Judge, Superior Court, Atlanta Circuit."

[fol. 139] 1. To that part of said order, judgment and decree which reads as follows:

"4. The Federal Communications Commission was without jurisdiction to nullify, change or anywise modify the duties and obligations of the parties to the contract of April 15, 1943," defendant, Regents of the University System of Georgia then and there excepted upon the ground that same was contrary to law, and now excepts thereto and assigns said ruling and judgment as error as being contrary to law, and says that the Court erred in ruling that the Federal Communications Commission was without jurisdiction to nullify, change or in any way modify the duties and obligations of the parties to the contract in question, because:

(a) Under the law, and under the uncontroverted evidence in this case, the parties to said contract knew that the operation of Radio Station WGST depended upon the grant of a license to so operate from the said Federal Communications Commission, and said operation was subject to federal regulation and control under the Communications Act of 1934, as administered by the Federal Communications Commission, and the contract of April 15, 1943, was made with reference to that law.

(b) The parties also knew that under said Communications Act of 1934, the Federal Communications Commission had jurisdiction over any contract or agreement affecting the operation of a radio station in the public interest, or affecting the present or future financial ability of a radio station to operate in the public interest, and the contract of April 15, 1943, was made with reference to that law.

[fol. 140] (c) The Federal Communications Commission found the Contract of April 15, 1943, to be such a contract over which it had jurisdiction, and the Federal Communications Commission did have jurisdiction over the subject matter and over said contract.

(d) The decision of the Federal Communications Commission that the contract was one over which it had jurisdiction because it affected the ability of the radio station to function in the public interest, cannot be collaterally attached * in the Fulton Superior Court, and the Fulton Superior Court cannot substitute its judgment as to the effect of the contract upon the ability of the station to function in the public interest for the judgment of the Federal Communications Commission on that subject, and to so hold is to substitute the Fulton Superior Court for the agency designated by Congress as the forum for such matters in a field in which federal power is exclusive.

2. To that part of said judgment, order or decree, which reads as follows:

"5. That portion of the order of the Federal Communications Commission of November 9, 1945, to wit:

" 'It is further ordered, upon consideration — the entire record that the application of Georgia School of Technology for renewal of the license of Station WGST, be, and it is hereby, denied without prejudice, however, to the submission before December 18, 1945, by the Georgia School of Technology, of a new application for a construction permit and license to operate on the same frequency, provided it is affirmatively shown that no further effect is given to the agreements between the Georgia School of Technology and [fol. 141] Southern Broadcasting Stations, Inc., which the Commission has found in Docket 5903 and in this proceeding to be contrary to the Communications Act and incompatible with the operation of the station in the public interest.' does not constitute a valid defense or bar as a matter of fact or law to the right of the plaintiffs to enforce the provisions of the contract of April 15, 1943, on the ground that said order has rendered performance on the part of the defendant Board of Regents impossible." defendant, Regents of the University System of Georgia, then and there excepted as being contrary to law, and now excepts and assigns said judgment and ruling as error as being contrary to law, and says that under the law and the uncontroverted evidence in said case, further performance of the contract of

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* [sic].

April 15, 1943, was rendered impossible by the action of the Federal Communications Commission, which action is equivalent to an act of law, and that under the ruling of the Federal Communications Commission a license to operate the radio station would not be granted so long as any force and effect were given to said contract by the defendant.

3. To that part of said judgment, order and decree, which reads as follows:

"6. The defendant Board of Regents cannot now assert that the physical properties, equipment and other assets received by the defendant Board of Regents from the plaintiffs and Southern Broadcasting Stations, Inc. was less in value than the amount of money that has been paid the plaintiffs under the contract of August, 1945.", defendant, Regents of the University System of Georgia, then and [fol. 142] there excepted as being contrary to law and now excepts and assigns said judgment and ruling as error as being contrary to law, because, under the law, specific performance of the contract of April 15, 1943, cannot be had, and no action lies as for breach of contract, but in equity the parties are not without a remedy, they having the right to an adjustment of equities under the doctrine of equitable rescission, and it was proper to assert and prove by uncontradicted evidence that the physical properties, equipment, and other assets received by the defendant, Regents of the University System of Georgia, from the plaintiffs, was less in value than the amount of money already paid to the plaintiffs under the contract.

4. To that part of said judgment, order and decree, which reads as follows:

"7. The plaintiffs are entitled to have the defendant Board of Regents to account to them for fifteen per cent. of the net billings received by the defendant Board of Regents from the operation of Radio Station WGST from August 1, 1945, to Sept. 1, 1947, defendant, Regents of the University System, then and there excepted as being contrary to law, and now excepts and assigns said judgment and ruling as error, as being contrary to law, because:

(a) Under the law and the uncontroverted evidence in said case, said ruling amounts to an order for specific performance of the contract for the payment of money.

(b) Said order and ruling amounts to an order for specific performance of a contract, the performance of which will result in a violation of law, and a violation of a valid order and ruling of the Federal Communications Commis- [fol. 143] sion, the agency designated by the Congress of the United States to administer and carry out the provisions of the Communications Act of 1934, the operation of said radio station being subject to said law and subject to the exclusive jurisdiction of said federal agency.

5. To that part of said judgment, order or decree which reads as follows:

"8. That on a proper accounting from the date of the defendant Board of Regents' last payment under this contract (month of July, 1943) to September 1st, 1947, the defendant Board of Regents is found to be indebted to the plaintiffs according to the monthly tabulation set out in the amendment filed by the Board of Regents on September 25, 1947, with interest at seven per cent. per annum on each monthly statement from the due date of each monthly account.", defendant, Regents of the University System of Georgia then and there excepted as being contrary to law, and now excepts and assigns same as error as being contrary to law, because under the law and under the undisputed evidence, said ruling and said judgment is based upon an erroneous measure of damages for the reason that Radio Station WGST could not legally function without a license from the Federal Communications Commission, and the Federal Communications Commission by its order of November 9, 1945, denied the application of the defendant for a renewal of the license because of the existence of the contract of April 15, 1943. Operation of the Station thereafter, with the contract in force, would have been illegal. Without the operation of the station, the contract had no monetary value, being predicated solely upon 15% net billings from [fol. 144] the operation of the station. Under the law there can no- be greater recovery for a breach of contract than there would have been had there been no breach. Had there been no breach of contract, the radio station could not legally have operated from November 9, 1945, to the date of said trial.

6. To said order, judgment and decree as a whole, defendant, Regents of the University System of Georgia, then

and there excepted as being contrary to law, and now excepts and assigns the same as error as being contrary to law.

Defendant, Regents of the University System of Georgia, comes now, within the time provided by law, and files this its exceptions pendente lite to each and all of the judgments and rulings hereinabove set out, and pray that the same be certified as true, and ordered filed on the record in said cause.

This 24th day of October, 1947.

Eugene Cook, Attorney General of Georgia. Hamilton Lokey, Special Deputy Assistant Attorney General of Georgia. Margaret Hartson, Attorney.

201 State Capitol, Atlanta 3, Georgia.

[fol. 145] CERTIFICATE

The above and foregoing bill of exceptions pendente lite is hereby allowed and certified to be true. Let the same, with this certificate, be placed upon the record.

This 24th day of October, 1947.

Bond Almand, Judge Superior Court of Fulton County (Atlanta Circuit).

Filed in Office, this the 24 day of Oct. 1947. D. W. Brown, Deputy Clerk.

IN SUPERIOR COURT OF FULTON COUNTY.

Number A-937
Fulton Superior Court

W. E. CARROLL et al.,

vs.

REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA

JUDGMENT—October 10, 1947

The above stated case having come on for trial and, by consent of the parties, the same having been tried before the court without the intervention of a jury on all issues of fact and law, and the court having made and filed, as a part

of the record, findings and conclusions: It is thereupon ordered, adjudged and decreed that the plaintiffs, W. E. Carroll, Clarence H. Calhoun, Mrs. Hattie J. Pickard, Mrs. Emma B. Moore and Sam Pickard, Trustee for Sam Pickard, Jr., do recover of the defendant, Regents of the University System of Georgia, the sum of $144,968.63 principal, the same being the amount due, under the findings of the [fols. 146-148] court, as principal up to and including the month of August, 1947; that the said plaintiffs do recover of said defendant the further sum of $10,991.31 as interest on said principal sum to the date of this judgment; that the said plaintiffs do recover of the said defendant future interest on the principal sum of $144,968.63 at the rate of 7 per cent per annum to the time of payment and satisfaction of this judgment.

The recovery hereinabove provided for is for the amounts adjudged to be due as principal up to September 1, 1947 with the accrued interest thereon up to date of this judgment.

It is further ordered that the plaintiffs do recover of said defendant the sum of $—— as cost for the use of the officers of the court. This judgment is superseaded for 20 days.

This 10th day of October, 1947.

Bond Almand, Judge Superior Court, Atlanta Circuit.

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 149] IN SUPREME COURT OF GEORGIA

REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA et al.

v.

CARROLL et al.

OPINION—Decided February 10, 1948

By the Court:

JENKINS, Chief Justice:

The instant case, although an action for damages resulting from breach of contract, was brought in equity by reason of prayers for an accounting and other equitable relief incidental to recovery designed to avoid a circuity of actions. The issues were tried upon the pleadings, stipulated facts, and certain documentary evidence without the intervention of a jury. The defendants admitted entering into the contract sued on, which called for the payment to plaintiffs of 15 per cent of the "net billings" received from the operation of radio station WGST for a specified period of time; and the defendants further admitted the breach of said contract, but set up by way of defense to the claim of damages certain undisputed facts to show that continued performance of such contract became impossible by reason of the action of the Federal Communications Commission in ruling that such contract was contrary to the public interest, and thereupon requiring the defendants to disaffirm said contract as a prerequisite to granting a renewal license to operate said radio station. Damages were awarded the plaintiffs as prayed in an amount represented by 15 per cent of the net billings of said station from the date of the breach of the contract up until the time the suit was instituted. [fol. 150] Exceptions are to the preliminary findings of law and fact as made by the trial court and to the final judgment entered thereon. Held:

1. "The mere necessity for an accounting to ascertain the amount due on a contract is insufficient to give equity jurisdiction to order an accounting." Burress v. Montgomery, 148 Ga. 548 (5); Martin v. Home Owners Loan Corp., 198 Ga. 288, 290. Nor is it made to appear in the instant case that the accounts are complicated and intricate, within con-

templation of the provisions of the Code, § 37-301, such as might make this case one of equitable jurisdiction. Furthermore, it appears that the accounting prayed by the plaintiffs was not complicated, but was furnished by the defendants as a part of their answer, and the accounting as thus rendered has been accepted as the basis for determining the amount of the judgment rendered by the trial court, and no exception is taken relating to the correctness of said accounting.

(a) The judgment of the lower court directing that the amount of recovery be paid directly to the plaintiffs, instead of to their agents, as contemplated under the terms of the contract sued on, which provision of the judgment is not excepted to by any of the parties including the agents who were made parties to the suit, effectively eliminates from the case any equitable feature which may have existed because of any necessity to avoid a multiplicity of suits or a circuity of action.

(b) While it is contended in the brief of counsel for the defendants, now plaintiffs in error, that the facts relied upon as a defense to the action for damages present a case [fol. 151] "for the application of the doctrine of equitable rescission," yet even though this be assumed, the defendants in their answer do not ask for rescission or pray for any *affirmative* equitable or legal relief in the enforcement of an equitable right, but to the contrary the answer, after setting forth that the defendants were no longer permitted to comply with their contract, merely prays that they "be dismissed hence and with [their] reasonable costs." In this connection, an action not otherwise equitable is not made so by a plea setting up purely defensive matter of an equitable nature, in the absence of prayers for some affirmative equitable remedy. This is true even though such answer might call for the application of equitable principles. Hecht v. Snook & Austin Furniture Co., 114 Ga. 921, 927; House v. Oliver, 123 Ga. 784, 785; Burnett v. Davis & Co., 124 Ga. 541, 544. Since whatever equitable features the case may originally have contained have been eliminated by a judgment of the lower court which is not excepted to *a fortiori* such purely defensive matter as is set up by way of defense in the instant case, without invoking an affirmative remedy in the enforcement of an equitable right, would not give

this court jurisdiction of the writ of error. Accordingly, the Court of Appeals and not this court has jurisdiction of the writ of error, and it is ordered, therefore, that the case be transferred to the Court of Appeals, without intimating thereby any opinion as to the rights of the defendants at law; the ruling in transferring this case merely being that, since no prayers for any affirmative equitable remedy are made, a court at law is the proper tribunal to determine [fol. 152] what rights the defendants might have under their plea, even though they may call for the application of equitable principles.

Transferred to the Court of Appeals. All the Justices concur, except Bell, J., absent on account of illness; Head, J., disqualified; and Wyatt, J., who took no part in the consideration or decision of this case.

[fol. 153] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 154] In Supreme Court of Georgia

16066

Order Transferring Cause to Court of Appeals—February 10, 1948

The Honorable Supreme Court met pursuant to adjournment.

The following judgment was rendered: Regents of the University System of Georgia et al. v. W. E. Carroll et al.

This case came before this court upon a writ of error from the superior court of Fulton county; and, after argument had, it is considered and adjudged that the case be transferred to the Court of Appeals, that Court and not the Supreme Court having jurisdiction thereof. All the Justices concur, except Bell, J., absent on account of illness, Head, J., disqualified, and Wyatt, J., who took no part in the consideration or decision of this case.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

Feb. 27, 1948.

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

K. C. Bleckley, Clerk. (Seal.)

[fol. 155] IN THE COURT OF APPEALS OF GEORGIA

31999

REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA, et al.

v.

CARROLL et al.

OPINION—October 27, 1948

By the Court:

1. Radio broadcasting is an instrumentality of interstate commerce and subject to regulation under the provisions of the commerce clause of the United States Constitution.

2. The Federal Communications Commission is an administrative agency of the Federal Government, empowered to enforce the provisions of the Communications Act of 1934 (47 U. S. C. A. Sec. 151, et seq.), and has the power and authority to grant or refuse licenses to radio-broadcasting stations, with a view to subserving the public interest so that the people shall have the best possible radio service; but nothing in the power granted to the commission, or in said communications act of Congress, gives to the commission the power and authority to regulate the private contracts and business of those operating radio-broadcasting stations, where the same is not necessary in the protection of the public interest, and where such contracts do not affect the interstate transactions of the radio station.

GARDNER, J.:

W. E. Carroll, Clarence H. Calhoun, Mrs. Hattie J. Pickard, Mrs. Emma B. Moore, and Sam Pickard, trustee for Sam

Pickard, Jr., brought suit in Fulton Superior Court against the Regents of the University System of Georgia and Fulton National Bank to recover damages caused by an alleged breach of contract by the regents. It was alleged that the [fol. 156] radio station W. G. S. T. is held and owned by the regents in trust for the Georgia School of Technology, and that the contract sued on was made by the regents with the plaintiffs for and on behalf of said Georgia School of Technology. The petition further alleged: that under the contract sued on it appeared that the regents purchased from the plaintiffs, who were the stockholders of Southern Broadcasting Stations Inc., the capital stock therein owned and held by them, agreeing to pay the plaintiffs therefor "a sum equal to 15 per cent of the net billings of Radio Station W. G. S. T., located in Fulton County, Georgia, of the sale of time on the air for any and all types of broadcasting, visual and sound, including any and all revenue which may be derived from such sources as a result of any new developments in the broadcasting field during the period for which the payments under said contract are to be made by said defendant"; that under the agreement such payments were to be made monthly to Fulton National Bank as agent, beginning April 15, 1943, and to January 6, 1950; that the regents paid this sum, to wit, 15 percent of said net billings of the radio station from April 15, 1943, to and including July, 1945; that no further sum has been paid by the regents under said contract after July, 1945; that under the contract each month since July, 1945, an amount, to wit, said 15 per cent of the billings of the station for that month, has become due the plaintiffs by the regents and has not been paid by them; and that there is now a large sum due the plaintiffs under the contract, which amount is unknown to them, and the ascertainment thereof requires [fol. 157] an inspection of the books of the radio station and an accounting. The plaintiffs prayed for judgment and an accounting to ascertain the amount due them under the contract. A copy of this contract was attached to the petition, and it was therein provided as set up in the petition. We might here state that on December 4, 1945, the regents filed the third application for license renewal. At the same time they filed an application for a construction permit. As an exhibit to both applications they filed a statement affirmatively showing that no further effect was being given

to the agreements condemned by the Federal Communications Commission. Thereafter, on March 7, 1946, the application was granted and the license renewal was issued. Since the issuance of that license there has been another renewal, on May 1, 1947, which runs until May 1, 1950. The radio station is being currently operated under this license.

In its answer to the said petition, Fulton National Bank admitted that it had been selected as the medium through which the regents were to make said payments to the plaintiffs. The bank had on hand a small sum left over from payments made to it by the regents, which it paid into court.

The regents admitted the allegations of the petition dealing with the subject-matter of the contract; and that no payments had been made thereunder to the plaintiffs since July, 1945. The regents set up in their answer the amount of the 15 per cent of the net billings of the radio station from July, 1945, to the date of the filing of the suit, thus obviating the necessity of an accounting to ascertain such sum. They did not contest the fairness of the contract [fol. 158] or its validity, except that they set up that, under the ruling of the Federal Communications Commission, the regents could not legally perform said contract and the non-performance thereof was excused, and the regents were not due the plaintiffs the sums sued for or any other amount under said contract that is, the regents contended that, under the rulings and findings of the Federal Communications Commission, it had become impossible to carry out the contract sued on, and therefore the regents are excused from a performance thereof. The commission contended that the contract whereby the Regents purchased the stock of the Southern Broadcasting Stations Inc. from the plaintiffs, and agreed to pay a certain percent of the net billings of the station for a specified number of months, was contrary to the public interest and inconsistent with the provisions of the Federal Communications Act (47 U. S. C. A. sec. 151 et seq.). The defense of the regents, therefore, is to the effect that they are excused as a matter of fact and of law from further performance of this contract by reason of the impossibility of their performing the same because of an act of law.

The case was submitted to Honorable Bond Almand, one of the Judges of the Superior Court of Fulton County,

upon an agreed statement of facts and without the intervention of a jury, and judgment was rendered for the plaintiffs and against the regents, awarding damages for the 15 percent of the net billings of said radio station accruing from July, 1945, to the date of the present suit, and amounting to $144,968.63 principal and $10,991.31 as accrued interest. Judge Almand denied the contentions of [fol. 159] the defendant as to the legal impossibility of performing the contract sued on by reason of an act of law, and that the Regents were therefore excused from performance; and ruled that the Federal Communications Commission was without power to take any action which would have the effect of nullifying, changing, or in any wise modifying the duties and obligations of the parties to said contract thereunder, whereby the regents purchased the stock of said broadcasting company, agreeing to pay therefor 15 per cent of the net billings of the station or gross income thereof derived from the operation of said radio station; and also ruled that the action of the Federal Communications Commission, in denying a license renewal to the regents for the operation of radio station W. G. S. T., so long as the said contract remained in effect, would not excuse the regents from further performance of such contract on the ground of impossibility of performance by reason of an act of law.

It appears that the first application to the Federal Communications Commission for a renewal of the license for radio station W. G. S. T. was made in January, 1940, by the Georgia School of Technology, and that this application was denied. After conducting hearings, the commission found that the radio station, in July, 1923, was acquired by gift from Clark Howell, Sr., a trustee of the school; that a contract had been made with Southern Broadcasting Company, predecessor of Southern Broadcasting Stations, Inc., to operate the station, the latter to receive the major portion of the income derived from the operation of the station; that thereafter Southern Broadcasting Stations, Inc., which [fol. 160] had succeeded to the rights of Southern Broadcasting Company, agreed to operate this station under the same contract; that in 1933 the board of trustees of the school was abolished, and the Regents of the University System of Georgia, an agency of the State of Georgia, was established by the State legislature; that an agreement was

entered into on June 18, 1936, between the regents, acting for the Georgia School of Technology and said radio station, and Southern Broadcasting Stations, Inc., extending the previous contract and undertaking to continue the operation of the station, and thereunder maintaining, in effect, control of such station and receiving the greater portion of the proceeds derived from the operation of said radio station; and that on March 23, 1943, the application for a renewal of the license was denied, with the right of the applicant to renew same "provided the commission is given assurance that the applicant is prepared to and will in fact assume and discharge the full responsibilities of a licensee." Southern Broadcasting Stations, Inc., intervened in the foregoing application and the subsequent proceedings thereunder, and such application and proceedings were designated in the office of said commission as File No. 5903.

Thereafter, in May, 1943, another application for renewal of license was filed by the regents on behalf of said radio station. Neither the broadcasting corporation nor the stockholders or former stockholders thereof intervened in these proceedings, which were known as File No. 6534, but they had actual knowledge of the same being filed and of the subsequent proceedings had therein, including the findings of the commission and the order and judgment thereon. Since [fol. 161] the findings of the commission on the first application and the terms on which the applicant was given the privilege of making another application for renewal of the license within a designated period, it appears that the applicant (the regents) had, under the contract of April 15, 1943, and by means thereof, purchased the entire stock of said Southern Broadcasting Stations, Inc. This application set out that the regents, or a committee appointed to act for the regents, had supervision, direction, and control of the operation of this radio station. Thereafter, pending this application, the applicant filed a petition for the grant of such license without a hearing, setting up therein that under the contract of April 15, 1943, the right to control the operation of the radio station was in the regents on behalf of the school, and asking for a renewal of the license. It was shown that the income of the station had increased in 1943 from 1942 and previous years. It was stated therein that "all connection between said station and all former officers, directors, and stockholders of the Southern Broadcasting Stations, Inc.," had been severed. This petition was denied

by the commission. Thereafter the application for renewal of the license of Radio Station W. G. S. T. was likewise denied, it being found and determined by the commission that the arrangement under the contract of April 15, 1943, would jeopardize the operation of the radio station financially, and the public interest would not be served, and also the assumption by the applicant of a burden, amounting to 15 percent of its gross income resulting not only from the operation of the station but from all new broadcasting developments, would have the effect of restraining the [fol. 162] licensee from entering the field of FM and television broadcasting, and such restraint does not appear to be in the public interest, and that such payments represent an effort on the part of the parties to the contract to give further effect to the agreement by which control of the radio station had been illegally transferred to Southern Broadcasting Stations, Inc., which would not be in the interest of the public, since it would, in effect, thwart the efforts of the commission to enforce the Communications Act, and that therefore the grant of this application for a renewal of the license would not serve the public interest, convenience, or necessity, and the application was denied, but it was provided in the order that another application could be filed within 90 days, "provided it is affirmatively shown that no further effect is given to the" contract sued on, which the commission had found to be incompatible with the operation of Radio Station W. G. S. T. in the public interest. The regents assert that the trial judge erred in rendering judgment for the plaintiffs. Error is assigned on the findings and rulings of the trial court and on the final judgment for the plaintiffs and awarding damages to them for the alleged breach by the regents of said contract of April 15, 1943, on the grounds, among others, that the court erred in holding that the Federal Communications Commission was without power to take any action in the premises which would have the effect of nullifying, changing, or in any wise affecting or modifying the terms and provisions of the contract of April 15, 1943, or of the duties and obligations of [fol. 163] the parties thereunder, and also erred in ruling and holding to the effect that the action of the commission, in denying a license renewal to the regents, so long as said April 15, 1943, contract remained in effect and was recognized by the regents as binding on them, should not conclusively afford to the regents a legal excuse from further

performance of this contract by reason of the impossibility on the part of the regents to perform the same and to carry out the provisions thereof by reason of an act of law.

A bill of exceptions was sued out by the regents directly to the Supreme Court, the suit having been brought by the plaintiffs in equity by reason of certain prayers for equitable relief. The Supreme Court transferred the writ of error to the Court of Appeals, holding that, since no prayers for affirmative equitable remedies were made, a court of law was the proper tribunal to determine what rights, if any, the defendants might have under their plea, even though they may call for the application of equitable principles. Regents of the University System v. Carroll, 203 Ga. 292 (46 S. E. 2d, 496).

[fol. 164] It is contended that the proper interpretation and correct application of the Federal Communications Act of 1934 (47 U. S. C. A. 151 et seq.) requires a different judgment from that rendered. Under this statute of Congress, the Federal Communications Commission was created and clothed with the power and authority to enforce the provisions of said law.

The radio broadcasting licensing system established by this act is a proper exercise by Congress of the power to regulate commerce. National Broadcasting Co. v. U. S., 319 U. S. 190 (63 Sup. Ct. 997, 87 L. ed. 1344). The standard provided by this law for the licensing of radio broadcasting stations is public interest, convenience or necessity. Id. The underlying policy of the communications act and of the Federal Communications Commission is to protect the public interest. The commission is an administrative agency set up by Congress to determine pursuant to this law the rights of the people to have the best possible radio service. See Scripps-Howard Radio v. F. C. C., 316 U. S. 4; (62 Sup. Ct. 875, 86 L. ed. 1229). Regents of N. M. College of Agriculture v. Albuquerque Broadcasting Co., 158 Fed. 2d, 900; Yankee Network v. F. C. C., 107 Fed. 2d, 212; Black River Broadcasts v. McNinch, 101 Fed. 2d, 235. But the arbitrary action of the commission in the exercise of its regulatory power is controlled under said act. See Yankee Network v. F. C. C., 107 Fed. 2d, 212.

The Federal Communications Commission has power in the "public interest" under said act to refuse licenses to stations which engage in practices contrary to the public

interest, convenience, or necessity. In each case that comes before it, the commission must exercise ultimate [fol. 165] judgment whether the grant of a license in the particular instance would serve the public interest, convenience or necessity. See National Broadcasting Co. v. U. S., 319 U. S. 190 (supra). A radio-broadcasting station is an instrumentality of interstate commerce. City of Atlanta v. Southern Broadcasting Co., 184 Ga. 9 (190 S. E. 594). This is so of necessity, as the signals of a weak radio station may carry beyond the limits of the State in which the station may be located. Under the commerce clause of the United States Constitution (par. 3, sec. 8, art. 1), Congress is given power "to regulate Commerce, among the several States." Code, § 1-125. Radio broadcasting "or communications" are all interestate. This is so, although such broadcasting may be intended for intrastate transmission only. Such communications admit of and require a uniform regulation and control throughout the United States. City of Atlanta v. Southern Broadcasting Co., supra.

The Federal Communications Commission has the power and authority in granting a license to a radio station to see that the public interest and convenience are subserved thereby, and an important element of public interest and convenience affecting the issue of a radio-broadcasting license is the ability of the licensee to render the best practicable service to the community reached by his broadcasts. The commission must see to it that all applicants for radio-station licenses have the necessary technical ability to broadcast programs, and that the stations are properly constructed and properly and adequately manned and do not interfere with other stations, and that all licensees are responsible, morally and financially. National [fol. 166] Broadcasting Company v. U. S., 319 U. S. 190 (supra.)

However, the Communications Act was not intended to place matters of a private nature before the Federal Communications Commission. Southern Broadcasting Co. v. Carlson, 187 La. 823 (175 So. 587). In Johnson v. Radio Station W.O.W., 144 Neb. 406 (14 N. W. 2d, 556), 326 U. S. 120 (65 Sup. Ct. 1475, 89 L. ed. 2092), it was held that the right of the Federal Communications Commission to license and require compliance with regulations of the commission does not deprive the State courts of jurisdiction

to hear and decide all other property rights in a radio station and the rights of the parties incident thereto. In Southern Broadcasting Corp. v. Carlson, supra, the court held that the State court had jurisdiction of a broadcasting company's suit for damages for breach of contract for the management of a radio-broadcasting studio licensed to the defendant, and for injunction to prevent further breach, as against the contention that the dispute should be settled by the Federal Communications Commission under the Communications act of 1934.

Under the provisions of the communications act as amended, it does not appear to have been the intention of Congress "to regulate the business of the licensee" radio-station operator, and such statute does not, properly construed, make any attempt to do so. "The commission is given no supervisory control of the programs, of business management, or of policy" of the radio-broadcasting stations licensed by such commission or of the operators thereof. Federal Communications Comm. v. Sanders Bros., [fol. 167] 309 U. S. 470, 475 (60 Sup. Ct. 693, 84 L. ed. 869). While radio broadcasting is truly an interstate proposition, and the operator of a radio-broadcasting station is the operator of a public utility, and thus subject to regulation as any other public utility engaged in interstate transactions would be under the authority given Congress by the commerce clause of the Federal Constitution, its private transactions, not affected with a public interest and not connected with its operation as an interstate public utility, are not subject to regulation and control by the Federal Communications Commission or under the provisions of the communications act of 1934, as amended, or any other governmental agency empowered to regulate interstate transactions of a public utility. Matters of private concern, and contracts affecting such rights, which do not have as their subject-matter the rights conferred by a license, or do not substantially affect such rights, are not within the scope of the commission's power to regulate and control in the public interest broadcasting by radio stations and licenses to such stations. Thus, the Federal Communications Commission "has held that contracts for the sale of broad-casting facilities," which "do not involve the transfer of the license itself or rights conferred by it, are matters of private concern and do not require the commission's consent or approval." See In re M. A. Lee, 5 F. C. C.

364; In re Heart's Radio Inc., 7 F. C. C. 292, and In re City of Atlantic City, 7 F. C. C. 485.

Counsel for the regents have not cited this court to any provision of law giving to the commission the power to [fol. 168] regulate the private affairs of the regents to the extent of abrogating an otherwise valid contract made by the regents with the stockholders of Southern Broadcasting Stations Inc., whereby the former purchased the stock of the latter and agreed to pay therefor a certain percent of the net billings of the radio station until 1950. It was not shown that this contract was illegal under the law for any reason. It does not appear that the subject-matter of the contract was affected with such a public interest as to justify the same to be nullified by the order of a governmental agency, charged by act of Congress under the authority of the commerce clause of the Constitution with the power to license radio-broadcasting stations, and to regulate their interstate transactions, namely the broadcasting of radio programs, to the extent of protecting the public interest in the ability of the station to broadcast for the public convenience and necessity. The effect of the contentions of the regents is to give to the commission such power. The regents contend that the refusal of the commission to grant a license renewal to them so long as the regents recognized this contract necessarily and as a matter of law excused them from carrying out the private obligation and contract made with the plaintiffs, whereby the regents purchased the stock in said Southern Broadcasting Stations Inc. from the plaintiff stockholders, and acquired all of the corporation's physical assets as well as its intangible properties and assets, and had agreed to pay therefor an amount of the gross income received by the radio station for a stipulated time, and in the performance of which it had acquired the stock and interest of the [fol. 169] plaintiffs in the corporate property, and had surrendered in Fulton Superior Court the charter of the corporation so that same now no longer exists. We cannot agree with this contention of the regents, and are of the opinion that the trial court correctly held that the defense of the regents, as set forth in their answer and amendment thereto, did not excuse them from performing this contract, otherwise deemed fair and valid, and awarding damages to the plaintiffs to the extent of 15 percent of the net billings actually received by the regents from the operation of this

radio station from August 1, 1945, to the date of filing this suit.

It is well to note that it appeared without dispute that the regents, being a State governmental agency, have been relieved from the payment of certain taxes, including income taxes, and that this amounts to an increase in the income received by the station from its operation in excess or equal to the 15 percent of the net billings derived by the regents from the operation of the radio station, the agreed purchase-price to be paid for the control of this radio station, and for the corporate stock of said broadcasting corporation and its physical and intangible assets and property. It cannot be anticipated that the contract sued on, insofar as it related to the payment of the agreed purchase-price of this stock and of the assets of the corporation, giving to the regents complete control of the radio station and its operation, would so far affect the financial ability of the radio station as to render the station unable to operate in the public interest. The evidence fails to show that the contract would affect the public interest in reference to the [fol. 170] broadcasts of this station.

The plaintiffs are not collaterally attacking the order and decision of the Federal Communications Commission by petition in Fulton Superior Court. They are simply seeking to enforce a private agreement by suit for a breach thereof. The defendants set up the order and decision of said commission as excusing them from performance of this contract, and contend that such order and decision nullified said contract, and that the plaintiffs are bound by such order and decision. With this contention we do not agree. To give to the communications act of 1934 (47 U.S.C.A. sec. 151 et seq.) the construction contended for by the regents, by holding that the commission had the right and power under said act to abrogate a private contract between a radio-station operator and the stockholders of a defunct corporation whereby the radio station operator acquired all the corporate assets, physical and intangible, and all stock held by the stockholders, agreeing to pay therefor an amount of the proceeds derived from the operation of the radio station for a stipulated time,—it not appearing that the payment of such purchase-price would render the radio station unable to operate in the public interest—would ascribe to Congress an unconstitutional attempt to regu-

late private business and contracts, not affected with a public interest, and not necessary for the public interest, convenience, or necessity.

This decision is not intended to be an adjudication that the regents would be liable to the plaintiff stockholders under the contract of April 15, 1943, for the payment of the purchase-money for said stock, in the event that the regents [fol. 171] are definitely refused a license by the commission because of a recognition by the regents of the contract now sued on except to the extent of paying over to the plaintiffs 15 percent of the net billings of the radio station during the months it has been and is operated under license from the commission, temporary or permanent, and derives an income from its operation. What we hold, and nothing more, is that, under the pleadings and agreed facts, the trial judge correctly found that there had been an unexcused breach by the regents of the contract of April 15, 1943, and that the regents were liable to the plaintiffs under said contract for such breach for the 15 percent of the net billings received from the operation of said radio station from August 1, 1945, to the filing of this suit, or as found by the trial court, for damages of $144,968.63 principal, and $10,991.31 accrued interest being 15 percent of the net billings during such time.

Taking the above view, the other contentions of the regents are necessarily to be determined adversely to the regents and are controlled thereby, and the trial judge's ruling and judgment excepted to were not erroneous for any of the reasons assigned.

Judgment affirmed. Sutton C.J., and MacIntyre, P.J., concur.

Decided Oct. 27, 1948.

[fol. 172] In the Court of Appeals of Georgia

31999

Judgment—October 27, 1948

The Honorable Court of Appeals met pursuant to adjournment.

The following judgment was rendered: Regents of the University System of Georgia et al. v. W. E. Carroll et al.

This case came before this court upon a writ of error from the Superior court of Fulton county; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed.

Sutton, C. J., MacIntyre, P. J., and Gardner, J., concur.

Sutton, C. J., was designated to preside in place of Townsend, J., disqualified.

[fol. 173] IN THE COURT OF APPEALS OF GEORGIA

[Title omitted]

MOTION FOR REHEARING—Filed November 5, 1948

Now comes Regents of the University System of Georgia, within the same term and within ten days of the rendition of the decision in this case adverse to it, and before the remittitur has been forwarded to the Clerk of the lower court, and files this its motion for rehearing requesting the court to vacate its former judgment and enter judgment for movant upon the following grounds:

1. In that portion of the court's decision embodied in Headnote 2, wherein the court said:

". . . but nothing in the power granted to the Commission (Federal Communications Commission) nor in said communications act of Congress (Communications Act of 1934, 47 USCA Sec. 151, et seq.) gives to the commission the power or authority to regulate the private contracts and business of those operating radio broadcasting stations, *where same is not necessary in the protection of the public interest, and where such contracts do not affect the interstate transactions of the radio station*" (Emphasis and parentheses supplied), the Court overlooked or misapplied the following material facts in the record, the effect of which requires a judgment different from that rendered by the Court, to-wit:

[fol. 174] (a) It was stipulated that the plaintiffs in this action, who were parties to the contract of April 15, 1943 (the contract here sued upon) knew that under the Communications Act of 1934 the Federal Communications Commission had jurisdiction over any contract or agreement

affecting the operation of a radio station in the public interest or affecting the present or future financial ability of a radio station to operate in the public interest (Record, pages 86 and 87).

(b) The Federal Communications Commission, in connection with the second application of the Regents for a license to operate Radio Station WGST, after a full and exhaustive hearing, determined that the contract of April 15, 1943 directly and adversely affected the ability of the station to function in the public interest, and placed such financial burdens upon the station that it could not properly function in the public interest with the contract in effect, and that the future operation of the station in the public interest was seriously jeopardized. The decision of the commission was in the following clear language (Record, page 60):

"In view of the foregoing, the commission concludes that the arrangements under the contract of April 15, 1943, would jeopardize the licensee's financial ability to conduct the future operation of the station in the public interest and that, therefore, public interest, convenience or necessity would not be served by a grant of the instant application."

(c) The Federal Communications Commission further found the contract to be adverse to the public interest in [fol. 175] that its burdens would hamper the station in its expansion into the fields of FM and Television Broadcasting (Record, page 60).

(d) The Federal Communications Commission further found that the contract was adverse to the public interest in that it was an effort to condone a previous illegal arrangement condemned by the commission and tended to thwart the commission in its enforcement of the Communications Act of 1934. (Record, page 61).

(e) The Federal Communications Commission found it necessary, in the protection of the public interest, to *deny* the application for license renewal for Station WGST, so long as the contract of April 15, 1943 was in effect. (Record, pages 61 and 63).

The commission having specifically found that the contract of April 15, 1943 adversely affected the ability of the radio station to function in the public interest, it begs the question to rule in regard to a contract which does not af-

fect the public interest and the decision in this case is not adapted to the controlling facts as they appear in this record.

2. In the body of the court's opinion, (page 15) where the court said:

"It does not appear that the subject matter of the contract was affected with such a public interest as to justify the same to be nullified by the order of a governmental agency, charged by act of Congress under the authority of the Commerce Clause of the Constitution with the power to license radio broadcasting stations and to regulate their interstate transactions, . . ." and at page 17, where the Court said:

[fol. 176] "It cannot be anticipated that the contract sued on, insofar as it related to the payment of the agreed purchase price of this stock and of the assets of the corporation, giving to the Regents complete control of the station and its operation, would so far affect the financial ability of the radio station as to render the radio station unable to operate in the public interest. The evidence fails to show that contract would affect the public interest in reference to the broadcasts of this station," and at page 18, where the Court said:

". . . it not appearing that the payment of such purchase price would render the radio station unable to operate in the public interest . . ."

the court overlooked or misapplied the following material facts in the record, and the following statutes and decisions, controlling as authority upon this Court:

(a) The Federal Communications Commission, by its decisions of September 19, 1945 (Record, pages 56 to 61) and November 9, 1945 (Record, page 63) reached exactly the opposite conclusion.

(b) The Federal Communications Commission, under the Communications Act of 1934, is the only proper agency to determine whether the contract of April 15, 1943 does or does not affect the ability of Radio Station WGST to properly function in the public interest.

The basic law which confers jurisdiction in such matters upon the Federal Communications Commission is the

Communications Act of 1934 (47 USCA, Sec. 151, et seq.) Apparently the Court has overlooked or has erroneously construed and misapplied the provisions of this statute, especially sections 301, 307 (a), 308(b), 309(a) and 310(b). [fol. 177] In connection with the proper construction of the Communications Act of 1934, upon the question of the commission being the only proper agency to determine such matters, the Court has overlooked a controlling authority, to-wit: Black River Valley Broadcasts v. McNinch, et al., 101 Fed. (2) 235, wherein the Court of Appeals for the District of Columbia at page 237 of its opinion, ruled:

"The Commission is an administrative agency set up by Congress to determine under statutory direction the rights of the people of the United States to have the best possible radio service. The interest, convenience, and necessity of the public is an essential test for the privilege of operating a radio station. This determination is, by the Act of 1934, lodged in the Commission. It is the only proper agency to decide these public questions, and its findings, under the law, must be maintained if they are not arbitrary or capricious, or erroneous in law, and are based upon substantial evidence."

(c) The Federal Communications Commission having made its determination after a full and exhaustive hearing of all the facts, such determination is binding unless reversed on appeal as provided by statute, and neither this court nor the Fulton Superior Court has power or authority to substitute its determination for that of the commission as to whether the contract does or does not affect the ability of the radio station to function in the public interest.

Upon this point the court has overlooked or erroneously construed or misapplied the following controlling authorities, which are binding upon this Court:

[fol. 178] Black River Valley Broadcasts vs. McNinch, et al., 101 Fed. (2) 235; Yankee Networks vs. FCC 107 Fed. (2) 212 at 216; Atchison, Topeka & Santa Fe Ry. vs. Scarlett, 300 U. S. 471.

In the Yankee Network case the following controlling proposition is found, at page 226 of the decision:

"Moreover, we are unable to accept appellants contention that the findings of the commission are arbitrary and capricious. It is true that the evidence is susceptible of other conclusions than those drawn from it by the Commis-

sion; but that is not determinative. Neither is it material that this court might have arrived at other conclusions. As was recently said by the Supreme Court in Rochester Telephone Corp. vs. United States, 307 U. S. 125, 145, 146, 59 S. Ct. 754, 765, 83 L. Ed. 1147; *'So long as there is warrant in the record for the judgment of the expert body it must stand'.''* (Emphasis supplied).

In the Scarlett case, the Supreme Court of the United States expresses the controlling principle of law as follows, (page 474):

"The regulation having been made by the commission in pursuance of constitutional statutory authority, it has the same force as though prescribed in terms by the statute. And the railway company having strictly complied with the regulation has discharged its full duty so far as the ladder requirement of the Safety Appliance Act is concerned. *The judgment of the trial court and jury cannot be substituted for that of the commission.*" (Emphasis supplied).

3. In the body of the Court's opinion (page 19) where the court said:

"What we hold, and nothing more, is that under the pleadings and agreed facts, the trial judge correctly found that [fol. 179] there had been an unexcused breach by the Regents of the contract of April 15, 1943, and that the Regents were liable to the plaintiffs under said contract for such breach for the 15 per cent of the net billings received from the operation of said radio station from August 1, 1945 to the filing of this suit . . ." the court has overlooked, erroneously construed or misapplied the following material facts in the record, and the following decisions, controlling as authority upon this court:

(a) It was stipulated that without a license from the Federal Communications Commission the Regents could not have legally operated the radio station (Record, page 81).

(b) It was stipulated that this fact was known to the parties when they made the contract of April 15, 1943, and that they further knew the operation of the radio station was subject to Federal regulation and control under the Communications Act of 1934, as administered by the Federal Communications Commission. (Record, pages 86 and 87).

(c) The contract was executed in contemplation of its approval by the Federal Communications Commission. In this connection the Court appears to have overlooked the controlling decision of the Supreme Court of Georgia in Federal Land Bank vs. Shingler, 174 Ga. 352, wherein the Court said, at page 361:

"However, it is an established principle that parties dealing upon a subject controlled by a Federal law are presumed to intend to contract with reference to the provisions of that law. Especially would this be true in Georgia, [fol. 180] under the Civil Code (1910), Par. 1, which provides: "The laws of general operation in this State are— 1. As the supreme law: The Constitution of the United States, the laws of the United States in pursuance thereof," etc., wherein Federal laws are given preference and priority over the laws of the state which may conflict with the federal legislation."

(d) The decision of the Federal Communications Commission denying the Regent's application for license renewal so long as effect were given to the contract of April 15, 1943, gave the Regents these alternatives:

1. Recognize the contract and go out of business, whereby the Regents would lose a very valuable property and the plaintiffs would get nothing (15% of nothing equals nothing), or

2. Disaffirm the contract and obtain the license necessary to stay in business.

The Regents chose the latter. The decision of this court forces the Regents to the former. It in effect orders the radio station to go out of business, since its license is predicated upon a disaffirmance of the contract and the station has never been authorized to operate with the contract in force. The decision of this Court has the further effect of rendering the operation of the station from August 1945 to date unlawful, since the commission found that operation of the station with the contract in force was contrary to the public interest, and the license was denied unless the contract was disaffirmed. This is a clear case for the application of the rule that impossibility of performance is an excuse for non-performance.

[fol. 181] In this connection we submit that the Court has overlooked and failed to give effect to the controlling

decision of the Supreme Court of Georgia in the case of The Macon and Birmingham Railroad Company vs. Gibson, 85 Ga. 1, wherein Judge Bleckley, at page 17 said:

"Nor is the right of the State so to amend or modify the charter abridged or in any manner affected by executory contracts entered into by the company with third persons before the amending act was passed. The Macon Construction Company, in dealing with the railroad company, was bound to take notice of the general law of the State, under which the right and power were reserved which have been exercised. So a corporation in the possession of franchises held at the will of the State cannot hinder the resumption or modification of those franchises by entering into executory contracts with third persons. Nor can that effect be wrought by like contracts between the parties immediately contracting with the corporation and sub-contractors under them. *On no contract whatsoever does the amendment now in question have any direct effect. Its only effect upon contracts is incidental, and if they cannot be performed consistently with the alteration in the charter made by the amending statute, their performance, insofar as thus hindered or obstructed, will be excused, the rule of law being that performance of contracts when rendered impossible by act of law stands excused.*" (Emphasis ours).

(e) The court, in finding that the plaintiffs were entitled to 15 per cent of the gross income of the radio station from August 1, 1945, until the filing of this suit, apparently has [fol. 182] overlooked the material fact in the record that the Regents had no right to a license if it gave effect to the contract. This is not a case where the Regents could legally operate the radio station whether it recognized the contract or breached it. Only by disaffirmance could it legally operate. Such being the case, if the station could not legally operate, it could have no net billings from sale of time on the air, and 15% of nothing equals nothing. Thus if the Regents had not breached the contract, plaintiffs would have received nothing under the contract. There is no authority under Georgia law to give more for a breach than a party would have received for performance of a contract.

The Court has doubtless overlooked the controlling decision upon the subject of the measure of damages in

Georgia, Lastinger v. City of Adel, 69 Ga. App. 535 at 536, where it said:

"An injured party cannot be placed in a better position than he would have been in if the contract had not been breached."

6. In the body of the court's opinion, at page 11, where the court said:

"However, the Communications Act was not intended to place matters of a private nature before the Federal Communications Commission. Southern Broadcasting Co. v. Carlson, 187 La. 823, 175 So. 587."

the Court has apparently erroneously construed or misapplied the Carlson case. In that case there was no holding that the management contract was a private matter not properly to be brought before the Commission. The trial court had concluded that the Commission alone had [fol. 183] jurisdiction over the matter and dismissed the suit. The appellate court reversed the trial court on the theory that *in the absence of action in the matter by the Commission,* the matter was properly triable on the merits in the Louisiana courts.

But this is not at all the case at bar. Here we have a contract which has been considered by the Commission and determined to adversely affect the ability of the radio station to function in the public interest. Under such circumstances there is no authority in the Fulton Superior Court or in this Court to substitute another determination as to the effect of the contract on the public interest. To do so is to collaterally attack and set aside the Commission's judgment, by whatever name it is called.

We submit that the basic error in the present decision of the Court stems from the determination by this court that the contract of April 15, 1943 does not affect the ability of the radio station to function in the public interest. This finding is in direct conflict with the determination of the Federal Communications Commission on that matter, which finding is conclusive in the case at bar. There can be no question but that the Commission, and not this Court, is the proper forum to decide that issue. The Commission having decided the issue, this court must follow that decision, otherwise it collaterally attacks the Commission's findings.

7. In affirming the ruling of the trial court that

"The Federal Radio Communications Commission was without power to take any action which would have the effect of nullifying, changing or in any wise modifying [fol. 184] the duties and obligations of the parties to said contract" (of April 15, 1943)

the Court has overlooked the following controlling authorities, binding upon this court, the effect of which will require a different judgment in this case:

Federal Radio Commission v. Nelson Bros. Bond and Mortgage Co. 289 U. S. 266, wherein the Supreme Court of the United States, held, at page 282:

"Those who operated broadcasting stations had no rights superior to this power of regulation. They necessarily made their investments and their contracts in the light of and subject to this paramount authority. This court has had frequent occasion to observe that the power of Congress in the regulation of interstate commerce is not fettered by the necessity of maintaining existing arrangements which would conflict with the execution of its policy, as such a restriction would place the regulation in the hands of private individuals and withdraw from the control of Congress so much of the Field as they might choose by prophetic discernment to bring within the range of their enterprises."

and the case of Union Dry Goods Co. vs. Georgia Public Service Commission, 145 Ga. 658, affirmed unanimously by the Supreme Court of the United States at 284 U. S. 372, the Court saying at page 377:

"These decisions, a few from many to like effect, should suffice to satisfy the most skeptical or belated investigator that the right of private contract must yield to the exigencies of the public welfare when determined in an appropriate manner by the authority of the State, and the judgment of the Supreme Court of Georgia must be

Affirmed."

[fol. 185] We submit that the present decision is wrong, and presents an irreconcilable conflict between this Court and the agency of Congress created to determine such matters. The decision should be withdrawn and a new decision rendered, based upon the proposition that the contract of

April 15, 1943 *does* affect the ability of the radio station to properly function in the public interest, and the Federal Communications Commission was authorized to predicate its grant of a license renewal upon the disaffirmance of the contract by the Regents. We respectfully submit that the authorities cited in our brief will then furnish a proper guide to a correct and sound decision as to the rights of the parties to this controversy.

We respectfully urge the court to grant this motion for rehearing.

Eugene Cook, the Attorney General. Hamilton Lokey, Deputy Assistant Attorney General of Georgia.

201 State Capitol, Atlanta, Georgia.

[fol. 186] CERTIFICATE OF COUNSEL

I, Hamilton Lokey, of counsel for movant, certify that upon a careful examination of the opinion rendered October 27, 1948 in the foregoing case, I am of the opinion that the material facts and controlling decisions set forth in this motion for rehearing were overlooked, erroneously construed or misapplied by the Court.

This 4th day of November, 1948.

Hamilton Lokey.

CERTIFICATE OF SERVICE

I, Hamilton Lokey, of counsel for movant, certify that I have this day mailed to James A. Branch, Esq. and Thomas B. Branch, Jr., Esq. of counsel for defendant in error, a copy of the within and foregoing motion for rehearing.

This 4th day of November, 1948.

Hamilton Lokey.

[File endorsement omitted.]

[fol. 187] IN THE COURT OF APPEALS OF GEORGIA

ORDER DENYING REHEARING—December 15, 1948

The Honorable Court of Appeals met pursuant to adjournment. The following order was passed: Regents of the University System of Georgia et al. v. W. E. Carroll et al.

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied.

[fol. 188] COURT OF APPEALS OF GEORGIA

No. 31999

[Title omitted]

NOTICE OF CERTIORARI—Filed December 17, 1948

To the Clerk of the Court of Appeals of Georgia:

You are hereby notified that it is the intention of Regents of the University System of Georgia, Plaintiff in Error, to apply to the Supreme Court of Georgia for a writ of certiorari to review the judgment of the Court of Appeals rendered and filed in the case above on October 27, 1948, in which a motion for rehearing was denied on December 15, 1948.

You are requested to prepare the record for use on certiorari.

This December 16, 1948.

Eugene Cook, Attorney General; Hamilton Lokey, Deputy Assistant Attorney General, Attorneys for plaintiff in error.

[File endorsement omitted.]

[fol. 189] SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

Case No. 16547

NOTICE OF APPLICATION FOR CERTIORARI—JANUARY 7, 1949

To the Clerk of the Court of Appeals of Georgia:

You are hereby notified that there has been filed in this office on this day an application to the Supreme Court for a writ of certiorari to the Court of Appeals in the case of Regents of the University System of Georgia v. W. E. Carroll et al.

Henry H. Cobb, Deputy Clerk Supreme Court of Georgia.

[File endorsement omitted.]

[fol. 190] SUPREME COURT OF GEORGIA

ORDER DENYING WRIT OF CERTIORARI—MARCH 16, 1949

The Honorable Supreme Court met pursuant to adjournment.

The following judgment was rendered: Regents of the University System of Georgia v. W. E. Carroll et al.

Upon consideration of the application for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby denied. All the Justices concur, except Bell, J., who dissents, and Head, J., disqualified.

[fol. 191] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 192] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 17, 1949

The petition herein for a writ of certiorari to the Court of Appeals of the State of Georgia is granted. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.